

THE  
BOMBAY AGRICULTURAL DEBTORS  
RELIEF LEGISLATION, 1939—47

PART I. Legislation in Operation  
including Rules and Forms

PART II. Previous Legislation  
Each With

An Historical Introduction, An Explanatory and Critical  
Commentary, Comparative Tables, Similar Legislation  
in Other Provinces, Government Notifications,  
Decided Cases and Statutory and Judicial  
Rules of Interpretation

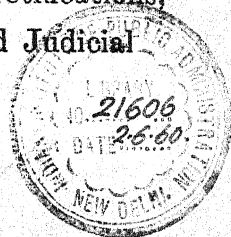
BY

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THE BOMBAY AGRICULTURAL  
DEBTORS RELIEF ACT, 1939, ETC.



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## PREFACE

The Agricultural Debtors Relief Legislation in the Province of Bombay was in an experimental stage when in January 1942 I published my Commentary on *The Bombay Agricultural Debtors Relief Act, 1939*. It remained in operation for over five years since then. During that period its sphere of operation was gradually extended. The last step towards it was taken in January 1947 when it was put into operation in all the remaining parts of the Province and the civil courts were invested with the powers of the Debt Adjustment Boards under it. During the same period the Act was amended thrice, partly to suit the changed policy of the Adviser Government in power between November 1939 and February 1946, partly to carry out the purposes of the Act in a more effective and expeditious manner.

That legislation has passed the stage of experimentation and revision and reached that of a permanent feature of the judicial system of this province with the passing of *The Bombay Agricultural Debtors Relief Act, 1947*, which repeals the Act of 1939 and vests the original jurisdiction under it in the regular civil courts of the Province. It is a consolidating and amending Act. Although it repeals the old one it maintains its link with it in several ways while taking account of the experience of the past 5-6 years and of the change in the economic conditions effected by the intervening war-period. The time is therefore ripe, in my opinion, for the publication of a digest of the whole legislation on the subject in this Province with comparative notes and tables setting out the points of its resemblance with and divergence from similar legislation in other Provinces. This work bringing within its covers all that pertains to the subject can be expected to play the role of such a digest and minister to the needs not only of the judges, the lawyers and the litigating public of all the classes and grades but also of the students of the agricultural economics of the Province because the legislative remedies created by a representative legislature prepare the ground for the constructive work necessary for the amelioration of the conditions of life of the agricultural classes who constitute as important a limb of the body politic as the industrial.

The difficulties in the way of placing before the public a work of this nature and size in the present conditions of life, in this country were by no means few. Many of them arising between the completion of the first manuscript of a revised edition of the old Act in November 1945 and the publication of this volume in its present upto-date shape were not even easily foreseeable. All of them have however been surmounted, though not before my faith, patience, ingenuity and resourcefulness were put to severe tests. I hope the end achieved will justify the means adopted.

"Prerana", Ghodbunder Road,  
SANTA CRUZ, BOMBAY 23.  
*Dated 15th November 1947.*

} *P. C. DIVANJI.*

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LEGISLATION, 1939-47

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ADDENDA

Part II. pp. 21-22 *add* in foot-notes 5-6 the word "Vinayak" before the word "Pandurangrao".

„ 23-24 „ after presumption no. 6:—It is presumed that the legislature is reasonable and consistent.<sup>1</sup>

p. 29 „ in foot-note 8 the word "Vinayak" before the word "Pandurangrao".

„ 41 „ at the end of the para on *Previous Preliminary Proceedings*:—So too must be deemed to have been held by the Bombay High Court in a recent ruling<sup>2</sup> where a reference to the Objects and Reasons of a Bill is held barred only when the language of the section is clear.

„ 45 „ at the end of sub-section (3):—When a statute is thus incorporated into another the repeal of the latter would not affect the former. Nor would its amendment, provided the former can function without it.<sup>3</sup>

„ 47 „ at the end of the para ending with the words "without reference to his salary":—The word "income" in this clause has been interpreted by the Bombay High Court to mean "net income."<sup>4</sup>

„ 59 „ in para 1 the word "Vinayak" before the word "Pandurangrao".

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1. *Income-tax Commissioner v. Saran Singh* (A. I. R. 1946 Lah. 147, 156).

2. *Ahmedabad Municipality v. Government of Bombay* (A. I. R. 1946 Bom. 159).

3. *Akubali v. Najimali* (A. I. R. 1946 Cal. 326, 328).

4. *Kekkhushru v. Jinabhai* (47 Bom. L. R. 445).

- „ 79 „ in foot-note 4 the under-mentioned case.<sup>5</sup>
- „ 84 „ „ „ 3 „ „ 6
- „ 89 „ in the para ending with the words “ must therefore be read along with this sub-section”, the following :—A party aggrieved by any such decision is not however prevented from filing an appeal against the award passed in the proceeding, if the decision is embodied and acted upon therein.<sup>7</sup>
- „ 94 „ in rule 2 at the end, the following :—But often a proviso is more than an exception or a qualifying clause and in such a case there is *ex hypothesi* some repugnancy between the purview and the proviso.<sup>8</sup>
- „ 104 „ in foot-note 2 the word “ Vinayak ” before the word “ Pandurangrao. ”
- „ 105 „ before “ 47 Bom. L. R. 852 ”, the title *People's Own Provident and General Insurance Co. v. Guracharya*.
- „ 107 „ in the para ending with the words “ mentioned in the same order ”, the following :—This view was confirmed by the High Court of Bombay when it held<sup>9</sup> that a “ Board ” not being a “ Court ” no revision application lay against its order.
- „ 114 „ in presumption 4 at the end, the following :—The general tendency of the courts would however be against such ouster.<sup>10</sup>

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5. *Income-tax Commissioner v. Saran Singh* (A. I. R. 1946 Lah. 147, 156).

6. *Haridas v. Bijoy Prasad* (A. I. R. 1946 Cal. 121, 123).

7. *Badeva Imamsahib v. Hiriyenna* (49 Bom. L. R. 153).

8. *Mahomed Mohiuddin v. Emperor* (A. I. R. 1946 Lah. 158, 174).

9. *People's Own Provident and General Insurance Co. v. Guracharya* (47 Bom. L. R. 852).

10. *Guli Jan v. Bihari Lal* (A. I. R. 1946 Pesh. 1, 2).

- „ 136 „ in foot-note 8 the case below-mentioned.”<sup>11</sup>
- „ 171 „ the second column after the words “ was declared to be final,” the following :—These words were interpreted by the Bombay High Court as not justifying the view that a revision application against a decision of the civil court is not maintainable.<sup>12</sup>
- „ 172 „ in the beginning of the para commencing with the words “ As the provisions of these two sub-sections etc. ”, the following :—The distinction between the procedure to be followed under these sub-sections has been clearly brought out and emphasised in the under-mentioned case.<sup>13</sup>
- „ 173 „ in foot-note 4 the under-mentioned case,<sup>14</sup>
- „ 175 „ rule 7 para. 2, the following :—A concise statement of the law is on the other hand found in the below-mentioned case.<sup>15</sup>
- „ 177 „ after the last para, the following para :—  
*This section and section 20* :—It has been held in a recent case<sup>16</sup> that a civil court is bound to transfer a pending suit even if the questions mentioned in the first sub-section are involved only so far as one of the debtors therein is concerned and if the Board would have jurisdiction to entertain an application by or against him under S. 20 of the Act.

11. *In re, Dhruvarajsing v. Vishvanathsing* (A. I. R. 1946 Bom. 65).

12. *Vinayak Pandurangrao v. Sheshadasacharya* (46 Bom. L. R. 711).

13. *Raghusing v. Ogeppa* (48 Bom. L. R. 615).

14. *Sylhet Loan and Banking Co. Ltd. v. Syed Ahmed Majtoba* (A. I. R. 1946 Cal. 337).

15. *Chint Ram v. Firm, Kirpa Ram* (A. I. R. 1946 Lah. 20).

16. *Musa Hasaffi v. Keshavlal* (48 Bom. L. R. 613).

- „ „ „ in foot-note 23 the word “ Vinayak ” before the word “ Pandurangrao.”
- „ „ „ in foot-note 24, the following :—This expression has also been interpreted by the Bombay High Court in a recent case,<sup>17</sup> as not including a suit for taking accounts under S. 15D of the *D. A. R. Act*.
- „ 215 „ at the end of the commentary on S. 45, the following :—This view has been found to have been supported by a recent ruling of the Bombay High Court<sup>18</sup> under S. 37 (1) of the Act which takes the place of para 1 of the old section 37.

NOTE.—I regret that some minor misprints here and there have remained uncorrected but these can be easily corrected by the reader of his own accord.

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17. *Tuka Krishna v. Dhanu Krishna* (49 Bom. L. R. 219).

18. *Tuka Krishna v. Dhanu Krishna* (49 Bom. L. R. 219).



# THE BOMBAY AGRICULTURAL DEBTORS RELIEF

## LEGISLATION 1939-47

### PART I

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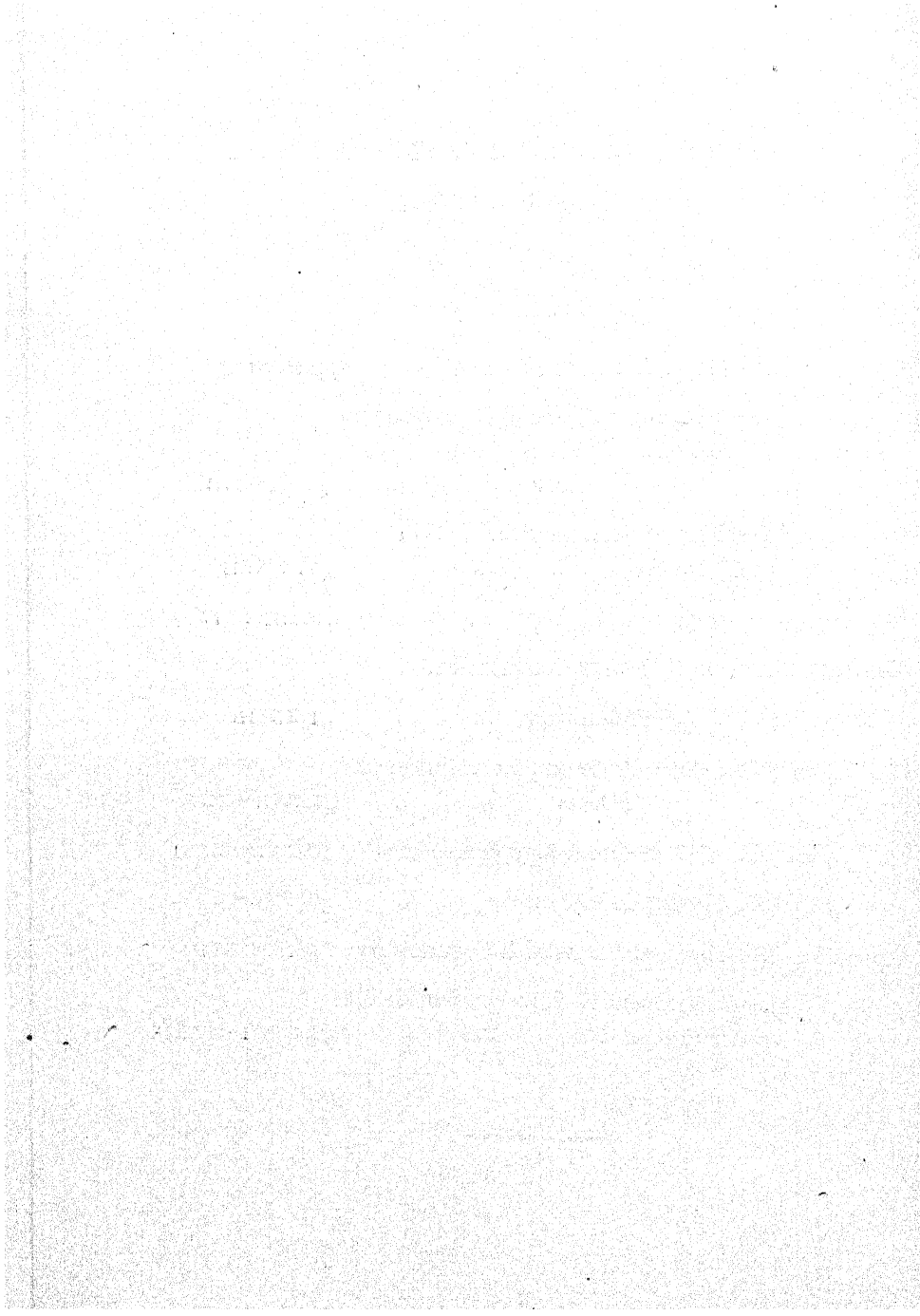
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# BOMBAY ACT XXVIII OF 1947

## INTRODUCTION

I. The Act and its past history ; II. Changes effected by it in the duties and rights of those concerned ; III. Problems arising out of this new Act. Appendix I.—Comparative Table of Corresponding Sections of the Acts of 1947 and 1939 ; Appendix II.—Table of the Provisions of Other Acts which can fill up the gaps in this Act.

### I.

*The Bombay Agricultural Debtors Relief Act, 1947*, which came into force in this Province from the 27th day of May 1947, is the 28th Act passed by the Legislature of the Province in the year 1947. Its full title is *An Act to consolidate and amend the law for the relief of agricultural debtors in the Province of Bombay* and its authorised short title given to it by S. 1 (1) thereof is *The Bombay Agricultural Debtors Relief Act, 1947*. However like other legislative enactments it will usually be referred to by its number and year as *Bombay Act XXVIII of 1947* or even as *Bom. XXVIII of 1947*.

The declared objects of the Legislature in passing it are :—(1) to consolidate the law for the relief of agricultural debtors in the Province of Bombay and (2) to amend the same. By the process of consolidation, it seeks to bring within the ambit of a single Act the provisions of the law on the subject contained in certain previous Acts. The very first Act passed on this subject in this Province was *Bombay Act XXVIII of 1939*, which received the assent of the Governor-General on 30th January 1940. Between that date and 26th May 1947 it had been amended three times by Governor's Acts which were *Act VI of 1941*, *Act VIII of 1945* and *Act II of 1946*. The history of the agricultural debt relief legislation prior to the passing of the Act of 1939 and the circumstances which led to the passing of the subsequent amending Acts, have been stated in details in the INTRODUCTION to the Act of

1939 as amended upto date, which together with the *Text* thereof and the *Commentary* thereon have been incorporated in this volume. Reference to it is bound to be very frequent, inspite of the repeal of that Act by S. 56 (2) hereof, for the reasons that the repealing subsection itself and the numerous sections or portions thereof preceding it contain such references thereto that even while administering this Act the Courts of original and appellate jurisdiction under it will necessarily have to look into them in order to decide the points with regard to them which may arise under this Act and that numerous sections or parts of sections of the old Act have been re-enacted in this with slight verbal consequential or substantial changes. All such changes have been lucidly explained in the comments on the respective sections and parts thereof. What remains to be narrated here is the history of the legislation subsequent to the passing of Bom. Act II of 1946 in the month of February of that year.

That Act had been drafted, passed and put into force during the regime of the Adviser-Government under S. 93 of the *Government of India Act, 1935*. The Congress party in the Assembly came to terms with the British Government and formed the Congress Ministry in the first week of March 1946. In view of the amendments made in the Act by those of 1945 and 1946, the Rules made under S. 83 were required to be amended. Accordingly a draft of the proposed amendments therein was prepared on 8th March 1946 and published at pp. 24-30 of Pt. IVB of the *Official Gazette* dated 4th April 1946. But according to the view of the popular Ministry the Act of 1939 as till then amended stood in need of several further amendments in order to carry out the policy of Government as regards the improvement of the rural economy of the Province. Moreover there was the necessity to replace within 2 years of the restoration of Provincial autonomy the Governor's Acts by those by the Legislature although the same provisions may be re-enacted thereby. It was accordingly decided to place before the Legislature a Bill for carrying out the said purposes. One such was drafted and published along with a *Statement of Objects and Reasons* and *Notes on Clauses* at pp. 225-31 of Pt. V of the *Official Gazette* dated 18th September 1946. It contained in all 19

sections out of which the substantial ones, 3 to 19, sought to amend SS. 2 (1), (4) and (6), 4, 9, 17, 29, 32, 37, 42, 45, 46, 50, 51, 59, 64, 66, 68 and 73. That Bill was not however placed before the Legislative Assembly till 11th February 1947 and on 12th February 1947 there appeared at pp. 43-66 of Pt. V of the *Official Gazette*, *L. A. Bill No. XIV of 1947* seeking to consolidate and amend the whole law on the subject with a *Statement of Objects and Reasons* and *Notes on Clauses* which did not explain why the previous Bill had been superseded, although it did state that fact

This Bill as placed before the Assembly, was passed at its first reading and referred to a Select Committee with a direction to report on it on 24th March 1947.<sup>1</sup> It submitted its report and proposed certain amendments in SS. 2 (5) (a) (ii) and (iii) and (b) (iii), 4 (2), 7, 9, 18, 19, 22, 24, 26, 31, 33, 42, 44, 55 and 56. This Report together with the Bill as proposed to be amended by it was published at pp. 162-88 of Pt. V of the *Official Gazette* dated 3rd April 1947. It was then placed before the Assembly for its second and third readings and passed with certain amendments made in it as proposed by the Select Committee, on 9th April 1947.<sup>2</sup>

The Legislative Council passed it finally on 11th April 1947.<sup>3</sup> The Governor General gave his assent to it on 22nd May 1947 and it was first published as *Bombay Act No. XXVIII of 1947* at pp. 257-80 of Pt. IV of the *Bombay Government Gazette* dated 27th May 1947. No specific date for its commencement having been mentioned therein it came into operation throughout the Province except the City of Bombay on 27th May 1947 in supersession of the Act of 1939 and those amending it.

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1. The full text of the Speech of the Hon'ble the Finance Minister made while introducing the Bill for its first reading has not yet been published officially. A press-note containing the gist of it was however published in the 'Bombay Chronicle' dated 11th March 1947.

2. The debates that may have taken place on this Bill in the Assembly have not yet been officially reported. However a Press-note containing a summary thereof together with that of the reply of the Minister appeared in the issue of the same paper dated 10th April 1947.

3. See the Press Report published in the issue of the same paper dated 12th April 1947.

## II.

The second declared object in passing this new Act being to amend the law on the subject, it has naturally made many important changes in the duties and rights of those persons who have a place in its scheme which remains the same in its main features described at length in sections V to VIII of the INTRODUCTION to the Act of 1939. This has been done by omitting certain sections or parts thereof altogether, inserting certain new ones and making important modifications in a major portion of them while re-enacting them. A general view thereof can be had from the COMPARATIVE TABLE which forms Appendix I to this INTRODUCTION. A view thereof chapter by chapter can be gathered from the comments made in the beginning of each of them. A detailed view of the extent, nature and legal effect of the changes made in each section can be formed from the comments under the heading *Scope of the section* made under each such section. Here I propose to record my estimate of the effects of the changes as a whole on the duties and rights of the persons concerned with the operation of this enactment, which, according to a reported reply of the Finance Minister to the debate on the third reading of the Bill is "only one of a series of measures—protective, preventive and constructive; legislative and administrative—which, according to the programme of the Ministry were intended to eradicate the evil of backwardness and poverty from our rural economy."<sup>4</sup>

Those persons are classifiable under 5 heads, namely :—(1) the administering authorities; (2) the debtor class; (3) the creditor class, (4) the pleader class and (5) the classes of debtors outside the purview of the Act. The changes effected in the position of each of them will be considered below *seriatim*.

(1) *The administering authorities*.—The jurisdiction to entertain and dispose of applications for relief had, under the Act of

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4. This quotation has been taken from the Press-note published in the 'Bombay Chronicle' dated 10th April 1947, the official report of the Debates on the Bill not having been published as yet.

1939, been vested in Debt Adjustment Boards specially appointed for specified areas under S. 4 of that Act. Until that Act was amended in 1945 those Boards were under the administrative control of the Civil Judges (Senior Division) in their respective districts. In cases of doubt the Boards had to make references also to them. Appeals from the Board's decisions and awards lay to them in cases involving claims upto Rs. 5,000 and to the District Courts in those involving claims beyond that limit. The Civil Judges (Junior Division) had as such no place in that administrative machinery. They were however eligible for being invested with the powers of the Board. After the Act was amended in 1945, administrative control and all appellate jurisdiction were transferred to the District Courts but the latter could transfer for disposal to the Senior Civil Judges in their districts, any appeals filed before them if those Judges had been invested with power to hear appeals under S. 27 of the *Bombay Civil Courts Act, 1869*. Owing to the direction contained in para 2 of sub-section (2) of S 56 of this Act for the dissolution of all the Boards appointed under S. 4 of the old Act, they are now out of the picture. The definition of the term "Board" and the sections relating to their appointment and removal have not accordingly been re-enacted and all references to them have been omitted from the sections or sub-sections which have been re-enacted and avoided in those of them which have been enacted for the first time. Their place under the designation of "the Court" has been taken in this Act by the Courts of the Civil Judges (Senior Division) as far as the territories within their ordinary jurisdiction are concerned and by those of the Civil Judges (Junior Division) where those of the former class have no such jurisdiction. The appellate jurisdiction under this Act has been vested in each of the District Courts under the designation of "the Court in appeal". Naturally therefore the original proceedings under this Act will henceforth be conducted before the presiding judges of the Civil Courts in the Province like the proceedings under other special Acts such as the *Indian Succession Act, 1925*, *Provincial Insolvency Act, 1920* etc. and appeals under this Act will be entertained and disposed of by those of the Districts like ordinary appeals under the *Civil Procedure Code*. Both sets of authorities are

authorised to make use of all the provisions of the *Code* "save as otherwise expressly provided in this Act." Moreover although the original proceedings will have to be conducted as proceedings under this special enactment and the right to file an appeal will be determined by the provisions of S. 43 hereof, the procedure for the disposal of the appeals will be that prescribed by Or. *XLI* in Schedule I to the *Code* because S. 12 which limited the grounds on which decisions and awards could be modified or reversed has not been re-enacted in any form.

The jurisdiction of the High Court of Bombay to entertain revisional applications under S. 115 of the *Code* has been kept inviolate by S. 43 of the Act, the Legislative Assembly having refused to pass sub-section (3) thereof which expressly ousted such jurisdiction. In which cases that remedy will be available to aggrieved parties has been made clear in the comments on the relevant sections. Such applications have also been expressly excluded from the operation of S. 19 (1) and (2) which correspond to S. 37 (1) and (2) of the repealed Act.

(2) *The debtor class.*—This is the section of the population of this Province for whose relief from indebtedness the whole legislation commencing from 1939 is being made. The important changes by which they are expected to be benefitted are those made in several sections and parts of sections of the old Act while re-enacting them in this Act. The group of changes which first catches our attention is that of those made in the definition of the term "debtor" contained in S. 2 (5) of this Act which corresponds to S. 2 (6) of the old Act. That sub-section has several clauses defining the qualifications which a person must possess for the purposes of this Act in its application to the cases of an individual and an undivided Hindu family which are dealt with separately in clause (i) of each of its two parts, (a) and (b). The remaining three clauses (ii) to (iv) in each of the parts have been amended substantially. The qualification in clause (ii) in both the parts as to holding land used for agricultural purposes has been so amended as to be applicable also to the case of a person who held such and at any time during the 30 years preceding 30th January 1940



but had transferred it as the result of a transaction in the nature of a mortgage though not purporting to be so and whether evidenced by an instrument or not. That in clause (iii) in both as to personal cultivation has been so amended as to make the qualification applicable to all those who had been so cultivating any land for the two cultivating seasons preceding the date of coming into force of this Act *i. e.* 27th May 1947 or of the date of establishment of the Board concerned under the repealed Act.<sup>5</sup> Lastly, the percentage of the maximum amount of annual income from non-agricultural sources contained in clause (iv) in both the parts has been raised from 20 to 33% or Rs. 500 respectively in the case of an individual and 40% of that income which is subject to a total of Rs. 1500 as made up of the incomes of all the members thereof, in the case of an undivided Hindu family.

Allied to these changes is the change effected by the substitution of rules (2) to (4) in S. 22 for sub-clauses (i) to (iv) of clause (e) in S. 42 (2) of the old Act, in the method of making up accounts. All accounts are to be made up now to the date of the application from the very beginning and the amounts of principal and interest due in respect of each transaction entered into upto 31st December 1939, is subjected to a cut, it being 40% in the case of transactions entered into before 1st January 1931 and 30% in that of those entered into on or after the said date. Those entered into on or after 1st January 1940 are exempted from the provision as to a cut.

These changes enure for the benefit of the agriculturists residing within the jurisdiction of every Court which has jurisdiction under the Act, whether original or appellate. The consequence thereof is that although owing to the further limitation specified in S. 4 it is only the debtors residing within the particular areas referred to therein who can make applications for adjustment of debts or against whom such applications can be made under that section till 31st July 1947, those residing in the areas for which Boards had been

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5. For the different dates on which Boards were established in different areas see Appendix I to the INTRODUCTION to the Act of 1939.

established prior to 1st February 1947 can make or be made parties to the applications that can be made under other provisions of the Act such as those contained in SS. 8, 24, 28, 37 and 38.

The second amendment that affects the scope of the definition itself consists of the omission of the words "cutting of grass" from the exclusion-clause in the *Explanation* to that sub-section, which from the very beginning gives a wider significance than the popular or etymological one to the word "agriculture." This omission will enable even those who do nothing else except the cutting of grass from their holdings on allowing it to grow therein during the monsoon in each of the two years referred to in sub-clause (iii) in both the parts, (a) and (b) of the definition, to take advantage of the provisions of this Act.

The third great advantage which they get under the new Act is that derived from the substitution of the word "transfer" for the word "sale" in S. 45 (1) of the old Act while re-enacting it as S. 24 (1) of the present one because whereas sales of immovable properties of the value of Rs. 100 and upwards can be made only by registered sale-deeds, transfers as defined in the *Transfer of Property Act, 1882* can be made even by delivery of possession accompanied by an oral agreement alone or that coupled with a *kabulayat* under the *Bombay Land Revenue Code, 1879*.

Fourthly, an agricultural labourer who is or is not a "debtor" under the Act can, under the new provision in S. 24 (2) apply to the Court before 1st August 1947 for a declaration that a transfer of landed property made by him or by the person from whom he has inherited it, at any prior time whatever was in the nature of a mortgage. If on investigation the Court comes to the conclusion that the allegation is correct, it is required to proceed further in the matter as if an application for the adjustment of the mortgage-debt had been made to it under S. 4 of the Act by a person who is a "debtor" under the Act, whether he does or does not possess all the qualifications mentioned in the definition of that term.

When the Legislature created this special remedy for a special class it was incumbent on it to define that class accurately by adding the definition thereof in S. 2 but it has not done so. The courts of original and appellate jurisdiction under the Act are therefore apt to take different views as to whom to call an agricultural labourer. There being no fixed period prior to the date of the application for which the person claiming the status should have been engaged in such labour, it would be sufficient even if he is engaged therein for one agricultural season. As for what is agricultural labour it must be deemed to be manual labour, with or without the help of mechanical contrivances, done in connection with "agriculture" as defined in the *Explanation* to sub-section (5) to section 2 of the Act. The qualification as to the proportion of income from non-agricultural sources to that from all sources or the maximum income from such sources will not be required to be possessed by such a person.

Fifthly, if the Court finds in any proceeding that the debtor and any of his creditors had colluded together in order to defeat the lawful claims of any other creditor or creditors the Court has been authorised by S. 35 (2) not only to refuse to scale down the debts but also to declare the debt as extinguished and irrecoverable.

Sixthly, this Act has a specific section, namely 36, newly added in order to provide that if a party fails to appear on the date of hearing of an application for adjustment of debts, either as originally fixed or as fixed on adjournment, the Court can proceed *ex parte* against him. Although creditors are as much entitled to the benefit of this provision as the debtors the majority of cases in which the Court would have occasion to make use of this power would naturally be those in which one or more creditors deliberately refrains from appearing before the Court in order to avoid a scrutiny into the nature of his dealings.

As against these advantages the debtors are likely to be confronted with one difficulty under the present Act because an award made under this Act is not made, by any provision of a general nature as was contained in S. 63 of the old Act, executable

as a decree of the Court. S. 38 (3) provides for the recovery of an instalment in arrears but not for the recovery of possession of a mortgaged property should the mortgagee fail to act up to an order for its restoration contained in an award. Perhaps that difficulty can be tided over on the application of the general principle that all the orders of a Court which direct a party to do a particular thing can be executed through the Court if not voluntarily obeyed.

(3) *The creditor class*.—In this class fall primarily the private money-lenders, whether individuals or firms. In the case of proceedings under this Act however it includes also the Provincial Government, local authorities such as a Municipality, a Local Board or a Village Panchayat, a Co-operative Society registered under the *Bombay Co-operative Societies Act, 1925*, a person authorised to advance loans to debtors under S. 78 of the repealed Act or S. 54 of the present Act, a holder of decree or order of a competent court for maintenance against a debtor, and a scheduled bank. Even under S. 3 of the old Act the latter class of creditors had a somewhat privileged position because they were exempt from the operation of certain specified operative sections of that Act. Under the corresponding section of this Act however they are placed outside the jurisdiction of the Court altogether, *i. e. to say*, they have been exempted from the operation of the whole Act, "Save as otherwise expressly provided" *e. g.* in SS. 4, 26, 32 and 49 of this Act. On the other hand under the provisions of S. 26 (3) and (4) the Collector and others have to furnish statements within the time fixed by the Court instead of by Government and are liable to incur the penalty of their claims being treated as extinguished in case of disregard of the Court's orders in those respects unless the Court deems fit not to act upon the additional provision in that respect in S. 26 (5).

As for the ordinary money-lenders, their position has been altered considerably, for it is obvious that to the extent to which the debtors are gainers as above explained, the creditors are losers. Their titles to certain immovable properties which could not be questioned under S. 45 (2) of the old Act are now open to question.

Moreover transfers of such properties not made by ostensible sale-deeds were outside the purview of that section. They are however brought within the ambit of S. 24 (1) of this Act by the use of the word "transfer" therein and questions as to their true nature can be raised in pending proceedings conducted under this Act before any Court, under proviso 1 to S. 56 (2) and in the new ones started under S. 4 of this Act. Further, sub-section (2) thereof provides for quite a new remedy for the recovery of properties by persons of the undefined class of "agricultural labourers." Again the addition of the words "or has held such land etc." in S. 2 (5) (a) (ii) and (b) (ii), and of the words "or of the establishment of the Board concerned under the repealed Act" in S. 2 (5), (a) (iii) and (b) (iii), and the raising of the percentage and maximum income in S. 2 (5) (a) (iv) and (b) (iv) have contributed to a considerable increase in the number of persons to whom the remedies provided for by the Act have become available provided they were not already barred before this Act came into operation.

Further it is now clear that even pending appeals along with suits, applications for execution and proceedings other than revisional, in respect of any debt, instead of those for the recovery of a debt, are liable to be transferred under S. 19 to the Court having jurisdiction under this Act if they involve the two questions mentioned in that section. Therefore even those filed for relief as to the possession of an immovable property must now be transferred without recording findings on the preliminary points involved therein. A colluding creditor who was formerly immune from punishment is now liable under S. 35 (2) to have his claim treated as extinguished and therefore not recoverable. A recalcitrant creditor who absents himself on a date of hearing in order to lengthen a proceeding to which he is a party can now be proceeded against *ex parte* under S. 36. If that is done he would be deprived of the right to represent his side of a point in dispute concerning his claim. Every creditor obtaining an award is now under an obligation created by S. 38 (1) to present it within the prescribed period for registration under the *Indian Registration Act, 1908* to the Sub-Registrar having

jurisdiction to register it. Under S. 38 (3) again a creditor cannot get enforced any other order in his favour contained in an award except the recovery of an instalment which has fallen into arrears unless the Court takes the view that he has an inherent right to do so, though there is no express provision for it. Moreover a resource society or a person authorised to advance loans to debtors who are parties to pending proceedings or awards made under this Act can insist upon its or his consent being previously obtained by the debtor only when he proposes to hypothecate or sell the standing crops or the produce of his land, not in the cases of all kinds of alienations and encumbrances. Lastly, creditors who had obtained awards from the D. A. Boards till the date of their dissolution and have not recovered their full dues under them have no express remedy provided for the recovery of the balances due to them, as S. 63 of the old Act under which this could be done is repealed along with the other sections thereof and S. 56 (2) contains no reservation with respect thereto or a provision for their recovery as if they were awards made under this Act. It is however, in my opinion, permissible to presume that the Legislature did not intend that such awards should cease to be executable and to allow them to be executed on the application of the provisions of S. 7 (c) or (e) of the *Bombay General Clauses Act, 1904* because the right of recovery acquired under the repealed Act when it was in force cannot be deemed to be affected by the repeal of the Act. Their exposure to attacks in suits under the ordinary law cannot however be prevented as there is no provision in this Act corresponding to S. 73 (ii) which acted as a bulwark against them under the old law.

On the other hand under S. 42 they have acquired the right to engage a pleader in all proceedings conducted under SS. 24 and 28 and if the Court concerned comes to the conclusion on inquiry started on a debtor's application that the debtor is not competent to represent his case and should be allowed to engage a lawyer at his cost it is open to the Court to permit the creditors concerned also to engage one at their cost.

(4) *The pleader class* :—The Act of 1939 contained S. 67 absolutely prohibiting pleaders and others from appearing for any of the parties to the proceedings before the D. A. Boards which were constituted specially for exercising the original jurisdiction under it, except when specifically permitted to appear for parties found on investigation to be incompetent to represent their cases personally. There was a cry against such an absolute prohibition when the Review Committee appointed in August 1943 went round to the head-quarters of the Boards then in existence. That Committee recommended that the ban should be lifted in the case of controversial matters in which questions of law were involved. The amending Act of 1945 did not still amend the said section in that respect. The corresponding section 42 in this Act however improves the position of the pleaders<sup>6</sup> to this extent that it excludes from the general ban as to all the proceedings under the Act, those conducted under SS. 24 and 28 of the Act, *i. e. to say*, those in which the questions involved are those of transfers in the nature of mortgages and fraudulent alienations or incumbrances. Further, if as the result of an investigation made on the request of one party to be permitted to engage a pleader the Court comes to the conclusion that the application deserves to be granted, it can without motion from the other party allow him too to engage a pleader. The condition that the fees of a pleader shall not form part of the costs of a proceeding is applicable to both the parties. Thirdly, the original jurisdiction under the Act having been transferred to the Court, revision applications against all the orders passed by it against which no regular appeal has been provided for under S. 43 would lie to the High Court. Lastly, the provisions of S. 73 of the old Act, which barred civil suits and proceedings in respect of “any matter pending before the Board or the Court under this Act,” “the validity of any procedure or the legality of any award, order or decision of the

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6. The word “pleader” in this section is to be understood in the same sense as is given to it by its definition contained in the *C. P. Code, 1908* which is made wholly applicable by S. 46 except where there is a conflict between this Act and the *Code*.

Board or of the Court," or "the recovery of any debt made payable under the award," not having been re-enacted in any form in this Act except as provided in the case of a surety in S. 6 (2) thereof the pleaders in the mofussil would have ample new work of a regular type arising out of the operation of this Act, to keep them engaged inspite of the special remedies provided by it, in some of which they will have no place as of right.<sup>7</sup> This is a legal consequence arising from the omission of an important check on litigation which was contained in the former Act, whether the Legislature did or did not intend it to follow from it.

(5) *The classes of debtors outside the purview of the Act :—*  
This Act having been passed for the express purpose of granting relief from indebtedness to the debtors of the agricultural class who hold lands and cultivate them personally and S. 11 having imposed a further condition as to the total amount of debts due by a person for the adjustment whereof only an application can be entertained under S. 4 the debtors of the non-agricultural class and even those of the agricultural class owing more than Rs. 15,000 upto the last date of making applications are outside the purview of the Act. Those debtors were in the same position even under the Act of 1939. That Act however contained S. 86 which permitted such persons to pursue their legal remedies under the *Dekkhan Agriculturists Relief Act, 1879* within 3 years of the Act being put into operation in any particular area and if a legal proceeding was started within that period, it

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7. It may be noted in this connection that the Government of Bombay had between January 1942 and February 1946 appointed some pleaders as Debt Relief Assistants for rendering legal help to backward class debtors and those of the aboriginal tribes. A discussion as to their legal position in proceedings under the old Act will be found at pp. 279-81 of the Commentary on the old Act. With reference to those of them who have been working as such in the districts of East Khandesh, West Khandesh, Nasik, Broach, Panch Mahals, Thana and Kolaba, a Press-note published in the "Bombay Chronicle" dated 7th February 1947 announced that the present Government had decided to continue them in service for the said purpose for a period of one year commencing from 1st April 1947.



permitted it to be continued till the end under that Act even after the said period elapsed. There is no such temporary provision in the present Act. However S. 56 (1) which repeals the said Act of 1879 after the expiry of three years from the date of coming into force of this Act, for all purposes, is applicable as well to the debtors outside the purview of the Act as to those within it. Hence the position of the former is so changed that unless the suits and proceedings in which they are concerned are terminated within the said period of three years, they will cease to be entitled to continue the proceedings after the end of that period and they will consequently have to be dismissed then.

As for the exclusion of the industrial labourers and the lower middle class wage-earners who have to resort to money-lenders at times, the *Money-lenders Bill of 1946* referred to in the last paragraph of the INTRODUCTION to the Act of 1939 has now been passed, and having received the assent of the Governor-General has become *Bom. Act XXXI of 1947*. It is a short Act in 39 sections providing for the licensing, registration and control of money-lenders in the Province of Bombay, and contains very salutary provisions for granting relief, to the debtors of the above class. It does not like *Bom. Act XXVIII of 1947* come into force from the date of its first publication but contains sub-section (3) of section 1 empowering the Provincial Government to put it into operation at any time by publishing a notification to that effect in the *Official Gazette*. This cannot however be done until rules have been framed under S. 39 and the necessary administrative machinery as provided for by S. 3 has been set up. As for them too, a draft of the proposed rules has been published at pp. 489-500 of Pt. IVB of the *Bombay Government Gazette, Extraordinary* dated Tuesday, 29th July 1947. It is hoped therefore that they will be placed before both the houses of the Legislature during their August-September session and be finally published in the *Gazette* with such modifications, if any, as they jointly suggest and that the necessary administrative arrangements will be made within a few weeks.

## III.

A glance at the the COMPARATIVE TABLE forming Appendix I to this INTRODUCTION will show that in place of the 86 sections in the old Act there are 56 only in this, that thereout, SS. 36 and 45 contain entirely new provisions and some other sections such as SS. 6 and 24 partially contain provisions relating to matters unknown to the former enactment. That means that many more sections and parts of sections than were absolutely necessary for giving effect to the policy of replacing the Boards by the Courts have not been re-enacted. Their omission is naturally likely to tax the ingenuity of the Courts and the pleaders concerned as to how to act in the contingencies which though provided for specifically in the old Act have not been so provided for in this Act. With regard to them it may be stated generally that the right course would suggest itself to those concerned if reference is made to other existing enactments in force in this Province, which can be made use of as the original jurisdiction under this Act has now been transferred to "the Court" as defined in S. 2 (3) hereof. For ready reference I append hereto as Appendix II a table showing which provisions of other enactments are likely to be useful for that purpose. In other cases reference may be made, to the provisions of SS. 7 to 9 of the *Bombay General Clauses Act, 1904* and to the rules of interpretation deduced from decided cases given in the Commentary on the old Act at several places, as and when applicable.

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## APPENDIX I.

### COMPARATIVE TABLE OF THE CORRESPONDING SECTIONS OF THE ACTS OF 1947 and 1939.

N. B. (1) This table has been given here for the purpose of a rough and ready reference. The correspondence between the sections or parts thereof is as regards the general nature of the provisions contained therein. Detailed notes as to the degrees of correspondence, changes in phraseology and in the nature of the provisions, policy etc. will be found dealt with generally in the beginning of each chapter and specifically in the comments on the individual sections or parts thereof.

Act of 1947.	Act of 1939.	Act of 1947.	Act of 1939.
<i>Chapter I.</i>	<i>Chapter I.</i>	S. 16.	S. 33.
S. 1 (1) and (2).	S. 1 (1) and (2).	„ 17 (1), (2), (3).	„ 35 (1), (2), (3).
„ 2 (1).	„ 2 (1).	„ 18.	„ 36.
„ (2) to (8).	„ (3) to (9).	„ 19.	„ 37.
„ (9).	... ..	„ 20.	„ 38.
„ (10), (11).	S. 2 (10), (11)	„ 21.	„ 39.
„ (12).	„ „ (11A).	„ 22.	SS 40 and 42.
„ (13).	„ ... ..	„ 23.	S. 44.
„ (14).	„ 2 (13).	„ 24 (1).	„ 45 (1).
„ (15).	„ „ (16).	„ (2).	... ..
„ 3.	„ 3.	„ 25.	S. 45 (2).
<i>Chapter II.</i>	<i>Chapters II and III.</i>	„ 26.	„ 47.
S. 4 (1).	S. 17 (1), (2), (3).	„ 27.	„ 48.
„ (2).	„ 18 (1) and R. 16.	„ 28.	„ 49.
„ (3).	„ 22 (3).	„ 29 (1), (2), (3)	„ 50 (1), (2), (4)
„ 5.	„ 19.	and (4).	and (5).
„ 6 (1).	„ 20.	„ 30.	„ 51.
„ (-).	... ..	„ 31.	„ 52.
„ 7.	S. 21.	„ 32.	„ 54.
„ 8.	„ 23.	„ 33.	„ 55.
„ 9.	„ 24.	„ 34.	„ 53.
„ 10.	„ 25.	„ 35.	„ 56.
„ 11.	„ 26.	„ 36.	... ..
„ 12.	„ 27.	„ 37.	„ 57.
„ 13.	„ 28.	„ 38 (1), (2)	SS. 61 (2), 62 and
„ 14.	„ 31.	and (3).	63.
„ 15.	„ 32.	„ 39.	S. 64.
		„ 40.	„ 65.
		„ 41.	„ 66.
		„ 42.	„ 67.

„ 43.	SS. 9 (1) and 14.	„ 50.	„ 71.
„ 44.	„ 11, 18 (2), 23 (4), 24 and 60.	„ 51.	„ 72.
„ 45.	„ ... ..	Chapter IV.	Chapter V.
„ 46.	SS. 7 (1), 13 and R. 35.	S. 52	S. 75
Chapter III.	Chapter IV.	„ 53 (1), (2), (3).	„ 77 (1).
S. 47.	S. 68.	„ 54.	„ 78.
„ 48.	„ 69.	„ 55.	„ 83.
„ 49.	„ 70.	„ 56 (1).	SS. 85 and 86.
		„ „ (2).	... ..

2. It will be seen from the above that there is *nothing in this Act corresponding to the provisions of the following sections or parts thereof in the Act of 1939*, namely:—SS. 1 (3), 2 (2), (8A), (12), (14) and (15), 4-6 7 (2), 8, 9 (2), 10, 12, 13, 15, 16, 17 (4) and (5), 22 (1) and (2), 29, 30, 34, 35 (4), 41, 43, 54 (2) (a) (b), (c), (d), (e), (f) (i), (k), (l), (m) and (n), 58, 59, 61 (1), 67A, 73, 73A, 74, 76, 79-82 and 84.

3. It will also be seen on the other hand that the provisions contained in the following sections or parts thereof of this Act are *entirely new*, namely:—SS. 2 (9) and (13), 6(2), 24 (2), 36, 45 and 56 (2). In addition to them there are very important alterations or additions made in SS. 1 (2), 2 (3), (5) (a) (i) (iii) and (iv), (b) (ii), (iii) and (iv), (7), 3, 4 (1), 5 (1), and (3), 15 (1), 17 (1), 18, 19, 20, 22, 23, 26, 29, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 47, 53, 55 and 56 while re-enacting the provisions contained in the corresponding sections or parts thereof of the Repealed Act.

4. *Lastly*, note that there are express *References to* certain provisions contained in the *Repealed Act* in the following sections or parts thereof of this Act, namely:—SS. 2 (6), 3 (iv), 4 (1), 25 (i), 32 (2) (iii) (c)<sup>2</sup>, 32 (2) (iv) *Explanation*, 53 (1) and provisoes 1, 2 and 3 to S. 56 (2).

The said provisions are those contained in SS. 2 (7), 4, 78, 9 (1) and (2) and those as to the decisions, orders or awards against which appeals lay under S. 9 (1) of the old Act. For further explanation on this point see the comments on proviso 3 to S. 56 (2) *infra*.

## APPENDIX II.

TABLE OF THE PROVISIONS OF OTHER ACTS WHICH CAN FILL UP THE GAPS IN THIS ACT

Section or part omitted.	Topic dealt with.	Other enactment applicable.	Section or part omitted.	Topic dealt with.	Other enactment applicable.
Ch. I. S. 2 (SA).	Def. of "person".	S. 3 (35) of <i>Bom. Genl. Clauses Act, 1904</i> .	S. 29.	Power to transfer applications.	S. 24 of the <i>C. P. Code, 1908</i> .
" (15).	" " "District Judge".	S. 5 of the <i>Bom. Civil Courts Act, 1869</i> .	" 30.	Continuance of proceedings on death of a party.	Or. 22 in Sch. I to the <i>C. P. Code, 1908</i> .
Ch. II. S. 9 (2).	Power to transfer appeals.	SS. 17 and 27 of the <i>same Act</i> .	" 34.	Summoning of a witness.	Or. 16 in the same Schedule.
" 10.	Limitation for appeals.	Art 152 in Sch. I to the <i>I. L. Act, 1908</i> .	" 41.	Value to be given to admissions of a debtor.	SS. 17-31 of the <i>I. L. Act, 1872</i> .
" 12.	Grounds of appeal.	S. 99 of and Or. 41 r. 2 in Sch. I to the <i>C. P. Code, 1908</i> .	" 43.	Presumptions to be drawn against a creditor for non-production of books.	S. 4 of the <i>same Act</i> .
" 13.	Procedure in appeals.	<i>The same Order</i> .	" 54 (2) (a) to (f), (g) and (h) to (n).	Particulars to be given in award.	Probably Or. 34 in Sch. I to the <i>C. P. Code, 1908</i> and Form No. 6 prescribed by rule 9.
" 16.	Power to enlarge time.	S. 151 of and Or. 17 in Sch. I to <i>C. P. Code, 1908</i> .	Ch. V. S. 73A.	Provision as to minors etc.	Or. 32 in Sch. I to the <i>C. P. Code, 1908</i> .
Ch. III. S. 17 (4) and (5).	Power to transfer applications.	S. 24 of the <i>C. P. Code, 1908</i> .	" 74.	Application of the <i>I. L. Act, 1908</i> .	S. 29 read with SS. 34, 9-18 and 22 of the <i>same Act</i> .
S. 22 (1) and (2).	Particulars to be given in application for adjustment.	Form No. I prescribed by rule 4.			

Out of the remaining omitted provisions these of SS. 1 (3), 2 (2), 4, 5, 6, 7 (2), 8, 15, 35 (4), 58, 61 (1), 80, 81 and 82 were not required to be re-enacted because of the policy to dissolve the Boards, to vest the original jurisdiction under the Act in "the Court" and to allow all the proceedings under the Act to be regulated generally by the provisions of the *Civil Procedure Code, 1908* except where otherwise provided in it. It was not necessary to re-enact S. 59 because S. 34 of this Act declares the portion of the debt which is disallowed to be extinguished for all purposes and for all times. S. 67A was not required to be re-enacted owing to the war having ended. With the provisions of S. 79 the public had nothing to do. S. 76 authorising the Board to issue a certificate to a creditor who had borrowed money in order to lend it to the debtor and authorising such a creditor to make use of it in another court for getting some concession was one which could have been dropped without affecting the purpose which the Legislature had in view in passing the Act. S. 84 was not required to be re-enacted because the *B. S. H. R. Act, 1938* was a temporary measure intended to have effect till *B. A. D. R. Act, 1939* was extended to and put into operation in the whole Province and that had been done with effect from 1st February 1947. The Bill had an additional sub-section (1) in S. 56 repealing that Act and the present sub-sections (1) and (2) were sub-sections (2) and (3) therein but the Assembly deleted it and changed the numbers of the remaining ones as they are in the Act. Lastly, the definitions of "secured debt" and "unsecured debt" contained in S. 2 (12) and (14) of the old Act seem to have been dropped as they did not extend or restrict the scope of the expressions as understood in ordinary parlance.

Such being the case the material omissions are those of the provisions contained in the first part of the sentence in S. 63 which made a registered award as a whole executable like a decree of the Court and S. 73.

The want of a provision making the award passed by a Court under this Act executable as its decree after registration renders the position of debtors entitled to recover back their mortgaged

and pledged properties very uncertain. In this connection it is significant that the clauses in S. 54 (2) requiring particulars of the debtor's properties to be given in the award have also not been specifically re-enacted. I cannot conclude whether these are inadvertent or deliberate omissions. If the former, the Act will have to be amended. If the latter it will lead to a condemnation of the Act as a remedy worse than a disease, for inspite of all the bother that the proceedings under this Act would involve, a resort to the ordinary legal remedy of a regular suit will in many cases remain open.

The latter consequence seems likely to follow also from the fact that the Act does not expressly provide for the execution of the thousands of awards passed by the Boards between 1-1-42 and 26-5-47 which may have remained partly or wholly unsatisfied unless and until the omission to do so is authoritatively held by the High Court in any matter going up to it in revision to have been covered by the provisions of clauses (c) or (e) in S. 7 of the *Bombay General Clauses Act, 1904*. Even then no action can be taken in respect of applications which may be required to be made under SS. 37, 39, 40 and 53 in connection with the awards made by the Boards, unless and until S. 56 (2) is suitably amended.

The omission to re-enact wholly or partly the provisions of S. 73 of the old Act except by the partial prohibition of suits by sureties contained in S. 6 (2), opens up a wide door to mischievous suits and proceedings under the ordinary law being started with the deliberate object of preventing the Courts having jurisdiction under this Act from proceeding with the applications filed under it when any of the interim orders which they pass therein are found by any parties not satisfactory. Nor is there anything in this Act to prevent the civil courts from entertaining and proceeding with suits of the nature mentioned in clauses (ii) and (iii) of S. 73 of the old Act, with respect to awards, orders or decisions made by the Boards and the debts which may have been adjusted by them. I am not in a position to lay my finger on any provision in any other Act which can act as a deterrent in this respect. S. 11 of the *C. P. Code, 1908* cannot apply to such awards etc.

because the Boards were not competent courts. If there is really none, I cannot imagine how the Courts invested with the jurisdiction to proceed with and dispose of the remainder of the "nearly three lakhs of applications covering debts to the extent of Rs. 15 crores" and the additional several lakhs of them that will be filed under SS. 4, 8 and 24 (2) of this Act, will be enabled to grant prompt relief from indebtedness to the agriculturists of this Province and fear that much of the work done by the Boards will be liable to be revised by the Courts unless and until a section containing the provisions of S. 73 of the old Act in some form or another is inserted in the present Act.

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8. These words are quoted from the report of the speech of the Finance Minister made while moving the first reading of Bill No. XIV of 1947 as published in the issue of the 'Bombay Chronicle' dated 11th March 1947. They give an idea of the state of work which existed on or about 1st February 1947. Since then the old Act was extended to the remaining areas of the Province and this new Act was passed.



# THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1947.

## CONTENTS OF SECTIONS

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No.	Topic dealt with
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### *Chapter I. Preliminary*

1. Short title and extent.
2. Definitions.
3. Savings.

### *Chapter II. Procedure for adjustment of debts*

4. Application for adjustment of debts.
5. Filing of statements by creditors and debtors on service of notice without filing application.
6. Application by debtor jointly and severally liable.
7. Position of assignees of non-debtors.
8. Application for recording settlement.
9. Settlement during pendency of proceedings before Court.
10. Voidness of certain settlements.
11. Maximum total amount of debts of one debtor which can be adjusted or settled.
12. Withdrawal of applications.
13. Consolidation of applications.
14. Service of notice on debtors and creditors by the Court to file statements.
15. Extinguishment of certain debts.
16. Duties of debtors and creditors.
17. Decision of preliminary issues.
18. Refund of court-fee to creditors.
19. Transfer of pending suits, appeals, applications and proceedings by civil and revenue courts.
20. General provision to take accounts.
21. Examination of creditor and debtor.
22. Mode of taking accounts.
23. Cases in which rent may be charged in lieu of profits.
24. Power to declare certain transfers to be in the nature of mortgages.
25. Exemption of certain transfers and transferees from the operation of section 24.
26. Notice, to Collector and other privileged creditors referred to in S. 3, to file statements.

## CONTENTS OF SECTIONS

27. Court's duty to determine particulars, value etc. of debtor's property.
28. Voidness of fraudulent alienations and incumbrances.
29. Manner of determining values of specific kinds of property.
30. Paying capacity of debtor.
31. Scaling down of debts payable by debtors.
32. Direction to make an award and provisions to be followed while making it.
33. When and how Court should prepare scheme for payment to creditors through the Bom. Prov. Co-op. Land Mortgage Bank.
34. Extinguishment of portions of claims in excess of the amounts arrived at on scaling down debts.
35. When debts not to be scaled down.
36. Court's power to proceed *ex parte* in certain contingencies.
37. When award can be re-opened and debts re-adjusted.
38. Registration of award, payment of court-fee and recovery of arrears of instalments.
39. Postponement of payment of instalment in case of remissions etc.
40. Prohibition of alienation by debtor before discharge without sanction.
41. Court's power to order interim sale of part of debtor's property.
42. Provisions as to appearance of pleaders in proceedings under this Act.
43. Appeals.
44. Court-fees.
45. Method of service of notice under this Act.
46. Application of the provisions of C. P. Code save as otherwise provided.

### *Chapter III, Insolvency Proceedings.*

47. When debtor to be declared an insolvent.
48. Procedure in insolvency proceedings.
49. Method of distribution of assets of insolvent.
50. Bar to application in insolvency in other courts.
51. Bar to appeals against orders under this Chapter, save on one ground.

### *Chapter IV, Miscellaneous.*

52. Computation of period of limitation when a proceeding under this Act intervenes.
  53. Prohibition of hypothecation or sale of standing crops or produce of land as affecting certain creditors unless permitted.
  54. Power of Provincial Government to authorise any person to advance loans to debtors.
  55. Rule-making power of Provincial Government.
  56. Repeal of Act XVII of 1879 and Bom. XXVIII of 1939 subject to certain reservations.
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## BOMBAY ACT XXVIII OF 1947

*First published in the Bombay Government Gazette, Pt. IV at pp. 257-80 on 27th May 1947. Assent of the Governor-General obtained on 22nd May 1947.*

*An Act to consolidate and amend the law for the relief of agricultural Debtors in the Province of Bombay.*

WHEREAS it is expedient to consolidate and amend the law for the relief of agricultural  
(Preamble) debtors in the Province of Bombay and for certain other purposes specified therein;  
It is hereby enacted as follows :—

### COMMENTARY

*Bombay Act XXVIII of 1947.*—This is a short title of the Act commented upon here by which it can be conveniently referred to whenever necessary. It is a mere coincidence that the number of this Act happens to be the same as that of the Act of 1939 on the same subject which it repeals and takes the place of. This is not the authorised short title of the Act. That is given to it by S. 1 (1) of the Act itself.

*Text of an Act*—If a question arises as to what should be deemed to be the correct text of this Act see the comments under the same heading at p. 2 *infra* of the Commentary on the Act of 1939.

*An Act to consolidate.....Bombay.*—This is the full title of the Act commented upon here. It mentions in a succinct form the objects which the Legislature had in passing it. Those specifically mentioned are :—(1) to consolidate the law and (2) to amend it.

The verbs “consolidate” and “amend” convey the idea that there was already in operation in the Province a law for the relief  
1-1.

of agricultural debtors in the Province of Bombay. That was contained in *Bom. Act XXVIII of 1939* as amended from time to time. The first amendment thereof had been made by *Bom. Act VI of 1941* before it was put into operation as an experimental measure in the beginning of January 1942 in certain select areas. After the experiment was tried for some period, it was again considerably amended by *Bombay Act VIII of 1945* and lastly it was partially amended by *Bombay Act II of 1946*. The law on the subject thus lay scattered in four successive enactments, the first of which had been passed by both the Houses of the Legislature while the three subsequent ones had been passed by the Governor of Bombay in the exercise of his authority during the regime of the Adviser-Government set up on suspending both the Houses of the Legislature after the Popular Ministry resigned in September 1939 and the Governor assumed the full responsibility for the administration of the Province on issuing a proclamation under S. 93 of the *Government of India Act, 1935*. The first object here mentioned is "to consolidate" the law on the subject which thus lay scattered in several enactments and to pass this one comprehensive piece of legislation replacing them.

This occasion has been availed of to introduce certain further amendments also in the existing law. A comparative study of the Act of 1939 as amended upto 1946 and the present Act shows that the amendments made are many and multifarious and fall, broadly speaking, into three sub-divisions, namely :—(1) changes in structure ; (2) change of policy ; and (3) changes calculated to avoid faults of draftsmanship.

(1) *Changes in structure* :—Whereas the old Act taken as a whole contained 86 and 2 additional sections, namely 67A and 73A, the present one contains 56 sections only. Further, whereas the former had been sub-divided into five chapters the latter is sub-divided into four chapters. The first chapter entitled *Preliminary* and comprising sections 1-3 remains as it was. But the second chapter in the old Act which related to the *Constitution and Powers of Debt Adjustment Board and the Powers of the Court in Appeal* has disappeared and the second one in the present Act bears the same heading, *Procedure for Adjustment of Debts*, which the third bore in the old Act. The

of the next two chapters, the third and the fourth, which correspond to the fourth and fifth in the old Act, namely *Insolvency Proceedings* and *Miscellaneous*, remain the same.

(2) *Change in policy* :—The fact of the elimination of the provisions as to the *Powers of the Court in appeal*, might suggest the inference that no appeals against any awards or decisions have been provided for in the present Act. It is not so however. There is S. 43 in this Act which reproduces the provisions of S. 9 (1) of the old Act with some modifications. Similarly there was S. 7 of the old Act conferring on the D. A. Boards the powers of a civil court under the *Civil Procedure Code, 1908* for proceedings under that Act generally besides those for particular purposes. It is not that there is no such section in the present Act. There is one so far as the general provision is concerned and that is S. 46, the last one in the second chapter. The fact of the elimination of the provisions as to the *Constitution and Powers of the D. A. Boards* also suggests the inference that the administration of the Act is left to be made by some other agency than the D. A. Boards, a class of special tribunals created for that purpose since the beginning of January 1942. That inference is correct. S. 56 (2) directs the dissolution of all the D. A. Boards set up under the old Act with effect from the date of commencement of this Act and the necessary verbal changes have been made throughout the Act by substituting the term "Court" for the term "Board", wherever it occurred and the definition of the latter term has been dropped from S. 2 and the term "Court" has been defined in S. 2 (3) otherwise than in the corresponding S. 2 (4) of the old Act. This change in policy is also responsible for the dropping of some of the provisions in the chapter on *Procedure* which are no longer necessary because the Civil Judge is to be understood by the term "Court", wherever it occurs in the Act without the specific descriptive words "in appeal" being added thereto. As the examples of this class of provisions in the old Act may be cited those as to transfer of applications [S. 17 (4) and 29], continuation of proceedings after the death of a party (S. 30), summoning of any person as a witness (S. 34), drawing of an adverse presumption against a creditor from the non-production of documents called for from him (S. 43),

reference to Court for opinion (S. 58), transmission of award for registration (S. 61), appointment of guardians of minors and persons of unsound mind (S. 73A), application of the Limitation Act (S. 74), determination of the status of the Chairman and members of the Boards as public servants (S. 80), their indemnification for acts done in good faith (S. 81) and penalty for offences against justice committed in the course of proceedings under the Act (S. 82). Besides the above there are certain other amendments which lead to an inference as to a conscious departure from the policy of the past Legislature. Those amendments are :—(1) those made in the definition of the terms “debtor” [S. 2 (5)], “holder” [S. 2 (8)], provision as to the right to make an application under S. 4 (1), addition of a provision for the advancement in future of “seasonal finance” as defined S. 2 (12), to that for the “financing of crops” as defined in S. 2 (7) of the old Act, which has necessitated consequential changes in SS. 3 (iv), 53, 54 (2) and 55 (2) to which SS. 3 (iv), 34, 32 (2) and 33 (2) of the present Act correspond, increase in the time-limit granted to a creditor in S. 5 (1), and granting of further discretion to the Court to enhance the limit, by adding a proviso to the whole section, substitution of the expression “date of application” for the expressions “1st January 1939 or the date of establishment of the Board concerned” or “relevant date” in SS. 11, 17, 18, 19 and 20 corresponding to SS. 26, 35, 36, 37 and 38 of the old Act, introduction of a triple classification of transactions for the purpose of the statutory percentage cut prescribed by S. 22 (2) corresponding to S. 42 (2) of the old Act, substitution of the exemption-limit for inquiry into the previous history and merits of 30 years prior to 30-1-40 in the newly added proviso to the said section, which takes the place of the proviso to S. 40 of the old Act, change in the phraseology of S. 24 (1) corresponding to S. 45 (1) of the old Act, which brings all transfers instead of a mere sale within the purview of the provision, addition of a new sub-section (2) in that section enabling the Court to grant relief in case of transactions dating from 30-1-10 to an agricultural debtor who comes under the altered definition of a “debtor” as contained in S. 2 (5) corresponding to S. 2 (6) of the old Act, and to an agricultural labourer regardless of the date of the transaction, deletion of the clause in the old Act S. 45 (2) (i) excluding sales made prior to 1-1-27 from the

purview of S. 25 corresponding to S. 45 (2) of the old Act, transfer of the Provincial Government's power to the Court to fix the time for giving the intimation required to be given by S. 26 (1) corresponding to the old S. 47 (1), simplification of the procedure in S. 30 corresponding with the old S. 51 for the determination of the paying capacity of a debtor, change in the order of priority for the payment of secured and unsecured debts under the proviso to S. 32 (2) (iii) corresponding to the old S. 56 (2) (g), abolition of the duty to pass awards straightway for the payment of debts by the Primary or Provincial L. M. Bank when the amount ascertained as payable is equal to or less than one-half of the value of the debtor's immovable property, penalisation of the creditor along with the debtor guilty of collusion by S. 35 corresponding to the old S. 56, provision in S. 36 for proceeding *ex parte* against an absent party, transfer of the duty to register an award from the Court to the Sub-Registrar under S. 38 (1) corresponding to the old S. 61, laying down in S. 38 (3) the procedure for the execution of an award by the Court through the Collector which was not clear from S. 63 of the old Act, provision in S. 41 for the interim sale of a property or its portion by the Court or the Court in appeal through its officer instead of through the Collector as under S. 66 of the old Act, authorisation by S. 42 corresponding to S. 67 of the old Act of the appearance of pleaders as of right in proceedings under SS. 24 and 28, omission of the provision in S. 67A for the appearance of an actively-engaged member of a Defence Service and the corresponding definition in S. 2 (11A), addition of a new section, S. 45, laying down the procedure for the service of notice which had been formerly done by a rule, empowering the Courts to order the sale of all the saleable property of a debtor from the very first by S. 47 (2) instead of in two stages as under the old S. 68 (2) and (3), omission of the provision barring civil suits in certain cases arising out of proceedings under this Act, which existed in S. 73 of the old Act, repeal of the whole of the old Act by S. 56 (2) and omission of the transitory provisions of the nature made by S. 86 of the old Act.

(3) *Changes calculated to avoid faults of draftsmanship:—*

Advantage seems to have been taken of this occasion also for the

purpose of the removal of certain faults of draftsmanship such as prolixity, redundancy, grammatical inaccuracies etc. which had crept into the old Act. Under this heading fall the following changes :—(a) substitution of the small type for the capital type in the case of the initial letter of each word defined in S. 2, (b) omission of the indefinite article ‘a’ before the word “notice” wherever it occurred and the definite article ‘the’ from the commencement of S. 2 (15) corresponding to the old S. 2 (16), (c) deletion of the superfluous words in certain sections e.g. the words “who ordinarily resides etc.” after the word “debtor” in S. 15 (1) corresponding to the old S. 32 (1), (d) addition of the necessary words to express the intention of the Legislature clearly e.g. the words “debtor and” before the word “creditors” in the marginal note to S. 14 corresponding to the old S. 31, (e) slight alterations in the construction of sentences such as that in S. 10 corresponding to the old S. 25, (f) consolidation of sections or parts of sections such as those of SS. 17, 18 and 22 (3) into S. 4, SS. 42 and 46 into S. 22, provisions as to court-fee in the old SS. 23, 24, and 60 into a comprehensive section 44 etc., (g) relegation of the provision as to appeals under the Act to the end of the chapter on *Procedure* which originally found place in the early part of Chapter II on *Constitution and Powers* and (h) re-drafting and re-arrangement of the matters in SS. 31, 32 and 55 corresponding to SS. 52, 54 and 83 of the Act of 1939.

*Certain other purposes specified herein :—*The consolidation and amendment in the different ways above-mentioned of the law for the relief of agricultural debtors in the Province of Bombay exhaust, in my view, the purposes of the Legislature in passing this Act. What other purposes, not falling in any of these categories, the Legislature had in view in doing so and in which places inside the Act they have been specified, is not clear to me.

For useful notes on *Title as an aid to interpretation*, the word *Preamble*, *Preamble as an aid to interpretation*, *Character of this legislation*, *Relation between the Federal Court and the Provincial High Courts* and *Provisions affecting vested rights created by the Central Legislature and those giving retrospective effect to some of them* See pp. 5-13 of the Commentary on Bom. Act XXVIII of 1939 *infra*.



*How to construe a consolidating Act* :—In construing a consolidating code, the proper course, according to the ruling of the Calcutta High Court in the case of *Jivan Krishna v. Sailendra Nath*<sup>1</sup>, is in the first instance to examine the language of the statute and to ask what is the natural meaning, uninfluenced by other considerations derived from the previous state of the law. It is not proper to inquire how the law previously stood and then assume that it was probably intended to leave it unaltered. This does not however mean that references to the previous history of a statute are always irrelevant. On this point refer to the observations contained in the Commentary on S. 2 of the old Act under the sub-heading (3) *Previous history of the law* under the main heading *Reference to subject* at pp. 35-41 of that Commentary. A more appropriate ruling on that subject is that in *Mahomed Mokiuddin v. Emperor*<sup>2</sup>. It is to the effect that the entire previous legislation on the subject-matter of a statute to be interpreted, during a particular period can be referred to for ascertainning the meaning of an expression used in that statute.

## CHAPTER I

### PRELIMINARY

1. (2) This Act may be called the *Bombay Agricultural Debtors Relief Act, 1947*.

Short title and  
extent.

(2) It extends to the whole of the  
Province of Bombay except the City of

Bombay.

### COMMENTARY

For useful notes on the *Heading of a Chapter as an aid to interpretation*, the word *Preliminary*, *What is a section*, *What is a sub-section*, the expression *Marginal notes* and a *Marginal*

1. A. I. R. 1946 Cal. 272, 278.

2. A. I. R. 1946 Lah. 158, 164.

*note as an aid to interpretation see infra pp. 15-20 of the Commentary on Bom. Act XXVIII of 1939.*

*Scope of this chapter:—*This chapter contains only the same kind of preliminary provisions as had been contained in the corresponding chapter of the old Act with certain additions and alterations which will be noticed in the Commentary in the three sections comprised therein.

*Scope of the section :—*This section has been intended to define the *Short title* of the Act and the *Extent* of its territorial application. This intention has been expressed in the two sub-sections into which it has been divided. It corresponds to S. 1 of the Act of 1939 with some important modifications.

*Sub-section (1) :—*The "short title" mentioned in this sub-section is the authorised short title although, as usual, the one mentioned at the top, namely Bombay Act XXVIII of 1947, will be more commonly used while referring to this Act on account of its greater brevity and on account of there being no possibility of a difficulty arising for its identification in the case of one who is engaged in the administration of law, either as a judge or as a lawyer.

This title is the same as that of the Act of 1939 repealed by it with the only inevitable change in the year of its enactment and succinctly embodies the purpose of granting statutory relief to the debtors of the agricultural class in the Province of Bombay.

*Sub-section (2) :—*This sub-section makes the Act applicable to the whole of the Province of Bombay except the City of Bombay. The corresponding sub-section of the Act of 1939 as originally passed was to the same effect. But the amending Act of 1941 had amended it and sub-section (3) as to the date of commencement of the Act, which existed therein from the very beginning, so as to empower the Provincial Government to extend the operative part of the Act to selected areas of the Province and put it into operation there. The Adviser Government had accordingly extended it and put it into operation in several selected areas bit by bit between January 1942 and April 1945 and the present Government had extended it and

put it into operation in the remaining areas except the City of Bombay from 1st February 1946. So that at the time of the passing of this Act the old one was already in operation throughout the Province except the metropolis. That being so there was no necessity for the Provincial Government to take powers to extend the Act and put it into operation piecemeal in selected areas. It accordingly makes a provision similar to the one which originally existed in the corresponding sub-section of the old Act.

*Date of commencement of the Act* :—Sub-section (3) of the old Act gave power to the said Government to fix and notify the date of the commencement of its operation. There is no corresponding sub-section in this section. Nor does the present Act anywhere else mention any particular date of its commencement. This Act must therefore according to S. 5 (1) of the *Bombay General Clauses Act, 1904* be deemed to have come into force from the date on which it was first published in Part IV of the *Bombay Government Gazette*, namely 27th May 1947 on which the sanction of the Governor-General given to it was first notified to the public. That date is, according to S. 6 of the said Act, printed above its title and forms part of the Act.

2. In this Act, unless there is anything repugnant  
Definitions. in the subject or context —

(1) “award” means an award made under sub-section 4 of section 8 or section 9, 32 or 33 or as confirmed or modified by the Court in appeal ;

(2) “co-operative society” means a society registered under the provisions of the *Bombay Co-operative Societies Act, 1925* ; Bom. VII of 1925.

(3) “Court” means the court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area where the debtor ordinarily resides and if there is no such

Civil Judge, the Court of the Civil Judge (Junior Division) having such jurisdiction ;

(4) "debt" means any liability in cash or kind, whether secured or unsecured, due from a debtor, whether payable under a decree or order of any civil court or otherwise, but does not include arrears of wages payable in respect of agricultural or manual labour ;

(5) "debtor" means —

(a) an individual —

- (i) who is indebted ;
- (ii) who holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so ;
- (iii) who has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act ; and
- (iv) whose annual income from sources other than agriculture and manual labour does not exceed 33 per cent. of his total annual income or does not exceed Rs. 500, whichever is greater ;

(b) an undivided Hindu family —

( i ) which is indebted ;

( ii ) which holds land used for agricultural purposes or has held such land at any time not more than 30 years before the 30th January 1940, which land has been transferred, whether under an instrument or not and which transfer is in the nature of a mortgage although not purporting to be so ;

( iii ) which has been cultivating land personally for the cultivating seasons in the two years immediately preceding the date of the coming into operation of this Act or of the establishment of the Board concerned under the repealed Act ; and

( iv ) the annual income of which from sources other than agriculture and manual labour does not exceed 40 per cent. of its total annual income and the aggregate of such incomes of the members of which does not exceed Rs. 1,500.

*Explanation :—*For the purposes of this clause “agriculture” includes horticulture, the raising of crops or garden produce, dairy-farming, poultry farming, stock-breeding and grazing, but does not include leasing of land or cutting only of wood ;

(6) “financing of crops” means advancing of loans as defined in the repealed Act ;

(7) "holder" means a holder as defined in clause (11) of section 3 of the *Bombay Land Revenue* Bom. V of 1879. *Code, 1879*, and includes a holder of land held for the performance of service useful to Government or village community, which service is actually being performed, but does not include a holder of any land held on behalf of a religious or charitable institution ; and the expression "to hold land" shall be construed accordingly ;

(8) "prescribed" means prescribed by rules ;

(9) "repealed Act" means the *Bombay Agricultural Debtors Relief Act, 1939* ;

Bom. XXVIII of 1939.

(10) "resourcesociety" shall have the same meaning as it has in the *Bombay Co-operative Societies Act, 1925* ;

Bom. VII of 1925.

(11) "rules" means rules made under section 55 ;

(12) "scheduled bank" means a bank included in the Second Schedule to the *Reserve Bank of India Act, 1934* ;

II of 1934.

(13) "seasonal finance" means advancing of loans for such purposes as may be prescribed, such loans being repayable on or before the 15th May following ;

(14) "to cultivate personally" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family ;

*Explanation I.* —If a person who was cultivating personally dies leaving as his heir a widow or a minor or

a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally, notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

*Explanation II.*—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult male co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants ;

(15) words and expressions used in this Act, but not defined, have the meanings assigned to them in the *Code of Civil Procedure, 1908* or the *Bombay Land Revenue Code, 1879*, as the case may be.

V of 1908.  
Bom. V of 1879.

## COMMENTARY

For useful notes on *Definition-clauses*, the terms *Reference to context*, *Reference to subject treated under the sub-headings*, (1) *Other Acts not in pari materia*, (2) *Other Acts in pari materia*, (3) *Previous history of the law treated under the sub-headings*, (a) *Previous state of the law* and (b) *Previous preliminary proceedings*, and (4) *English law* see *infra* pp. 31-43 of the Commentary on Bom. Act XXVIII of 1939.

In continuation of the observations made under the sub-heading *English law* in the said Commentary read the following very appropriate recent observations of the Calcutta High Court in the case of *Badsha Mia v. Rajjab Ali*.<sup>3</sup> They are :—Rules of interpretation of

3. A. I. R., 1946 Cal. 348, a case under the *Bengal Money-lenders Act, 1940*.

statutes have now reached a condition that they themselves require to be interpreted. As applied in India their source is apart from the General Clauses Acts, decisions of English Courts pronounced with reference to English Statutes but since the Privy Council itself applies those rules in interpreting Indian enactments it is not open to any one to say that they are not appropriate.

In England statutes are framed on keeping judicial interpretation of words in view. It is however doubtful whether in the case of the framers of the Indian statutes of the present times, specially of the Provincial Legislatures, the same presumption can always be made.

But even while applying an English rule of interpretation one must have regard to the kind of statute with reference to which it was formulated, the Court which formulated it and the legislative practice of the time.

*Definitions and changes in law made thereby*:—(1) The word "award" has been so defined in this clause as to mean an award made under sub-section (4) of S. 8 corresponding to the same sub-section of S. 23 of the old Act, or under S. 9 corresponding to S. 24 of the said Act, or under S. 32 corresponding to S. 54 of the said Act, or under S. 33 corresponding to S. 55 of the said Act or any award as confirmed or modified by the Court in appeal. The said sections provide for the making of awards on applications for recording a settlement, made out of Court, both when no applications for adjustment of debts had been made and when such applications are pending, of awards made after taking accounts and scaling down of debts, if necessary, and of those made after further scaling down of the debts with the consent of the creditors and providing for the payment of the amounts so arrived at by the Primary Land Mortgage Bank of the locality or the Provincial Land Mortgage Bank.

It deserves to be noted that whereas the definition of this word in the old Act contained the words "by the Board" after the word "made" this definition does not contain there the words "by the Court". They must however be deemed to be understood there for it is only "the Court" as defined in sub-section (3) which has jurisdic-



tion to make any of the awards which can be made under the sections mentioned in the definition.

It also deserves to be remarked that this definition does not include an award made by a D. A. Board upto the date of its existence under the old Act, that therefore the word "award" as occurring in SS. 37, 38, 39, 40, 43 and 53 cannot be construed as meaning an award made by such a Board and that consequently the Courts invested with jurisdiction under this Act cannot entertain or proceed with applications made under any of the said sections in connection with such awards. For further notes on this point see the Commentary on the said sections.

A further noticeable change is the substitution of the words "the Court in appeal" for the words "the Court under section 9". The significance of the change lies not in the addition of the words "in appeal" after the words "Court" for that would have been a mere verbal change necessitated by the transfer of original jurisdiction under the Act to "the Court" as defined in clause (3) below. It lies in the omission of the words "under section 9" altogether instead of the substitution of the corresponding S. 43 of the Act. The said words were inappropriate even in the old definition because "the Court" had been indirectly empowered to modify or set aside certain decisions and awards by S. 12 of the old Act not by S. 9. The omission of those words therefore has the only effect of the correction of an error of draftsmanship.

The effect of the absence of any provision in this Act corresponding to S. 12 of the old Act will be found assessed in the Commentary on S. 43 of this Act.

(2) The definition of the term "co-operative society" given here is the same as that given in the corresponding S. 2 (3) of the old Act except that the words "or deemed to be registered" which occurred in the latter between the words "registered" and "under" are absent from the former. It is doubtful whether they served any useful purpose there and it is therefore proper that they should have been dropped from the present definition.

(3) The definition of the term "Court" in S. 2 (4) of the old Act was very elaborate, it having been intended to have different meanings in different sections. The one thing common to all of them was that it meant some court other than the tribunal invested with original jurisdiction under the Act. The term as here defined has a uniform meaning everywhere in the Act and that is the tribunal invested with original jurisdiction under the Act which takes the place of the Debt Adjustment Board succinctly defined as the "Board" by S. 2 (2), corresponding to which there is now no clause.

The tribunal which now takes the place of the Board is the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in the area in which the debtor ordinarily resides and, where there is no such, that of the Civil Judge (Junior Division) having jurisdiction in the said area.

The designations "Civil Judge (Senior Division)" and "Civil Judge (Junior Division)" which correspond to the old designations "First Class Subordinate Judge" and "Second Class Subordinate Judge" have not been defined in this Act. There are no accurate definitions thereof even in the *Bombay Civil Courts Act, 1869*. Their significance can however be gathered from SS. 21, 22 and 24 of that Act as amended in 1943. For this purpose see pp. 56-57 *infra* of the Commentary on S. 2 (15) of *Bom. Act XXVIII of 1939*.

(4) The definition of the word "debt" here given is the same word for word as that given in S. 2 (5) of the old Act. For its explanation see p. 46 *infra* of the Commentary on *Bom. Act XXVIII of 1939*.

The definitions of the expressions "secured debt" and "unsecured debt" which had been given in S. 2 (12) and (14) of the old Act have been omitted from this Act, most probably because they were unnecessary.

(5) This clause corresponds to S. 2 (6) of the old Act in which the word "debtor" had been defined and which has been explained at length at pp. 46-51 *infra* of the Commentary on that Act.

It is noticeable on comparing them as a whole that (1) the doubleness of the definition as given from the standpoints of (a) an

*individual* and (b) *an undivided Hindu family* remains intact; (2) *Explanation I* giving an inclusive definition of the term "agriculture" as occurring in both the sub-clauses also remains the same except that the figure "1" after the word is dropped, the word "agriculture" has been spelt with a small "a" instead of a capital "A" and the words "grass or " occurring between the words "of" and "wood" in the last line are omitted; and (3) *Explanation II* has been omitted altogether together with the proviso thereto.

Inside the sub-clauses (1) the original sub-division of each clause into parts (i) to (iv) remain in both and so does the wording of part (i); (2) in (a) (ii), which was originally worded as "who holds land used for agricultural purposes the following addition has been made at the end, namely:—"or has held such land at any time not more than 30 years before the 30th January 1940, which has been transferred, whether under an instrument or not, and which transfer is in the nature of a mortgage, although not purporting to be so"; in (b) (ii) the original words were the same as in (a) (ii) except that for the word "who" there was the word "which". Those words remain even in the present part (ii) of the sub-clause. As for the addition therein it is of the same words as in (a) (ii) with this difference that between the words "*which*" and "*transfer*" in the second part of the sentence the additional word *land* occurs in (b) (ii); (3) In both (a) (iii) and (b) (iii) the words "from a date prior to 1st April 1937" have been substituted by the following, namely:—"for the cultivating seasons in the two years immediately preceding the date of coming into operation of this Act or of the establishment of the Board concerned under the repealed Act and" and the proviso to both has been omitted; (4) in (a) (iv) the figures "33" and "500" have been substituted for the figures "20" and "300" and the word "ordinarily" occurring before the word "exceed", and the proviso and explanation thereto have been omitted; in sub-clause (b) (iv) the figure "40" and has been substituted for the figure "20" and the following words and figure have been substituted, namely:—"and the aggregate of such incomes of the members of which does not exceed Rs. 1,500",

for the words "or does not exceed Rs 500, whichever is greater", which existed in the corresponding portion of the old definition.

Out of the changes mentioned in the last but one paragraph those of a material nature are nos. (2) and (3). Even out of those in no. (2) the substantial one is the omission of the words *grass* or from the last line of the only *Explanation* now remaining. On account of that omission *cutting only of grass* must now be deemed to have been included in the definition of "agriculture". Hence one who holds land used only for cutting grass would be deemed to be a debtor if he satisfies the other conditions.

Explanation II, to the omission whereof along with that of the proviso thereto change no. 3 relates, was rendered unnecessary when (a) (ii) and (b) (ii) were amended as stated in the last paragraph. The omission of the proviso was due, like that of a similar one in several other sections of the old Act such as 17, 26, 35, 36, 38 and so on, to a change in policy.

From amongst those made inside the sub-clauses, no. 2 as said above indicates a change in the policy of the Legislature to make the remedy provided for by this Act available not only to a class of debtors who hold agricultural land till the time of an application for the adjustment of a debt or for recording a settlement of a debt but also to that of those who held such land at any time from 30th January 1910 downwards and had transferred it by passing an instrument or in any other manner such as on agreeing to a mutation of names in the village records, on the understanding that the transaction was to be treated as one in the nature of a mortgage. NOTE that the word used here is a 'transfer' not a 'sale'. Hence this amendment must be deemed to cover all cases of transfers *inter vivos*, except a plain gift, made on the above understanding. A similar change in policy is indicated by the change in part (iii) of both the sub-clauses. The part as it originally stood required continual personal cultivation from a date prior to 1st April 1937 in the case of debtors applying to the Boards established between January and April 1942 and for the two cultivating seasons immediately preceding the date of establishment of the Boards set

up after the commencement of the operation of *Bom. Act VIII of 1945 i. e.* after 21st April 1945. That obviously gave an advantage to the debtors residing in the areas wherein Boards were established after the said date. That inequity is now removed by requiring uniformly for all debtors personal cultivation during the two cultivating seasons preceding either the commencement of the operation of this Act or the date of establishment of the Board concerned. For ascertaining the dates of establishment of the Boards, see Appendix I to the INTRODUCTION to *Bom. Act XXVIII of 1939*.

As in the case of the two previous changes, those made in part (iv) of each sub-clause also indicate a departure from the previous policy. The omission of the word "ordinarily" removes the vagueness which had crept into the provision as to the proportion between the incomes from all sources together and the non-agricultural sources. The change in the percentage of that from the latter in the case of an individual from 20 to 33 and in that of an undivided Hindu family from 20 to 40 and the raising of the maximum of the total income in the case of an individual from 300 to 500 and in the case of an undivided Hindu family from 500 to 1,500 further indicate clearly the intention of the Legislature to extend the benefit of this Act to a wider portion of the class of debtors who may be supplementing their agricultural incomes by taking to subsidiary occupations owing to the extraordinary rise in the prices of the necessities of life during the last 5 years. This change is likely to have the salutary effect of the development of rural cottage industries. The combined effects of the changes in these 3 sub-clauses will be that many more debtors and creditors will be within their rights in making applications under S. 4 than were qualified to do so under the old Act and these will include even some of those who had ceased to be so under the old Act. I fear that even debts extinguished under S. 32 of the old Act will be revived because all the remedies except that under S. 4 are open to and against all the debtors who have been holding land used for agricultural purposes for the two cultivating seasons preceding either the date of coming into force of this Act or the date of establish-

ment of the Board concerned. I doubt whether the Legislature intended this consequence to follow the enactment. Moreover I feel that this occasion should have been taken advantage of to redraft the whole definition so as to bring together into one clause all the relevant matters concerning the qualifications of a debtor which lie scattered here and there in the Act. Thus the word "indebted" in (a) (i) and (b) (i) requires a further reference to the definition of a "debt" in S. 2 (4) and to the provisions of S. 6 (1) which permit a debtor the payment of whose debt is guaranteed by a surety or who is otherwise jointly and severally liable along with others for the repayment of a debt; the expression "holds land" in (a) (ii) and (b) (ii) necessitates a reference to the definition of the expression "to hold land" contained in S. 2 (7) which again requires it to be read along with that of a "holder" contained in the same clause and that again requires a reference to S. 3 (11) of the *Bombay Land Revenue Code, 1879*; the expression "has been cultivating personally" used in (a) (iii) and (b) (iii) requires them to be read with definition of the expression "to cultivate personally" together with the explanations thereto given in clause S. 2 (14). And lastly, as no application under S. 4 can be entertained by or against a debtor unless the total amount of the debts payable by him on the date thereof does not exceed Rs. 15,000 as provided in S. 11 even if a person or an undivided Hindu family fulfils all the conditions laid down in this section, an application under S. 4 cannot be maintained unless the total amount of debts on the date thereof is within that maximum limit. In the absence of a definition comprehensive enough to cover all these points, a simultaneous reference to the provisions in S. 2 (4), (7), and (14) and S. 11 of this Act and S. 3 (11) of the *Bombay Land Revenue Code, 1879* and in some cases to S. 6 (1) of this Act would be necessary before the Court can come to conclusions one way or the other as to the preliminary issues mentioned in S. 17 of this Act.

NOTE:—S. 24 (2) contains an exception to the applicability of this definition in a case falling under that sub-section of section 24. Hence this definition is applicable to the cases falling under the whole of this Act except S. 24 (2) thereof.

(6) The expression "financing of crops" has not been defined here independently but the definition thereof given in S. 2 (7) of the old Act has been adopted here as a part of this Act. To that extent therefore a reference to the old Act as still in force must be made inspite of the repeal thereof in general terms by S. 56 (2) of this Act.

For that definition and its explanation see pp. 28 and 51 *infra* of the Commentary on that Act.

*Repealed Act*:—This definition incorporates in this Act that contained in the Act of 1939 which it repeals by S. 56 (2) hereof. Such a case of the repeal of a statute incorporated in another by a reference was considered by the Calcutta High Court in the case of *Akubali v. Najimali*<sup>4</sup> and it was ruled therein that when a statute is incorporated by reference into a second, the repeal of the first does not affect the second, and that even an amendment made in the first does not affect the second if it is possible for the subsequent Act to function without the amendment. See also the provisions of SS. 7, 8 and 9 of the *Bombay General Clauses Act, 1904* re-printed in the Commentary on S. 56 (1) of this Act and the judicial principles given at pp. 314-15 of the Commentary on the old Act.

(7) The term "holder" has also similarly not been defined independently, but its definition given in the *Bom. Land Revenue Code, 1879* has been adopted as had been done in the corresponding S. 2 (8) of the old Act which has been explained at pp. 52-53 of the Commentary on that Act.

There is however some amendment made in the excluding clause in the old Act and that is that the clause excluding from the definition the holders of other alienated lands which cannot be alienated without the sanction of Government such as the holders of Saranjams, Talukdari estates etc., has been omitted from the definition given here. This indicates an intention on the part of the Legislature to extend the benefit of this Act to those holders also.

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4. A. I. R. 1946 Cal. 326, 328.

NOTE:—The definition of the word “person” which had been inserted in the Act of 1939 by the amending Act of 1945 has been omitted from this Act. See however the Commentary on clause (14) *infra*.

(8) The word “prescribed” which had been defined in S. 2 (9) of the old Act and explained at p. 53 of the Commentary thereon has been defined here too in the same words.

(9) The term “repealed Act” is a new one used for brevity at certain places in this Act to refer to *Bom. Act VIII of 1939*, e. g. in S. 2 (6) of this Act. Wherever the expression occurs, it must be understood to be the said Act as amended upto February 1946. See on this point the note on that word in clause (6) *supra* and the ruling in *Atiqa Begum v. Abdul Magni Khan*.<sup>5</sup>

(10) The term “resource society” has been defined here by a reference to the definition thereof in the *Bombay Co-operative Societies Act, 1925* as it had been done in S. 2 (10) of the old Act.

For the definition given in the other Act and its explanation see p. 53 of the Commentary on the old Act.

(11) The word “rules” too has been defined here in the same terms as in the corresponding S. 2 (11) of the old Act with this difference that the number of the section given here is 55 instead of 83, as it should obviously be.

For an explanation of that definition see p. 53 of the Commentary on the old Act.

(12) The term “scheduled bank” too has been defined here in the same terms as in S. 11A of the old Act for which see p. 29 of the Commentary thereon.

It does not require any explanation or quotation to understand it.



(13) The expression "seasonal finance" is quite a new one introduced in SS. 3 (iv), 32 (2) (iii) (c) and S. 53 (1) and its definition given here is referred to in S. 55 (2) (a). On comparing this definition with that of the "financing of crops" given in S. 2 (7) of the old Act it appears that whereas the advances of the latter class are repayable at any time during the harvest-season next following the cultivating season of the year in which they are taken those taken by way of a "seasonal finance" are repayable definitely on or before the 15th May following *i. e.* in almost all cases before the first seasonal rainfall.

The purposes for which the latter can be taken or given are intended to be prescribed by the rules to be made under S. 55 (2) (l). To this extent this, though a definition-clause, contains a substantive provision.

(14) The expression "to cultivate personally" which occurs in the definition of the word "debtor" in S. 2 (5) has been defined and explained here in the same terms as in S. 2 (13) of the old Act which have been sufficiently explained at pp. 54-55 of the Commentary on that Act.

The only change found between the wording of the sub-clauses in the two Acts, is the insertion of the word *male* between the words *adult* and *co-parceners* in Explanation II to this clause in this Act. Most probably it seems to have been inserted in order to remove a doubt for which, so far as I can see, there is no reasonable ground for adult female members of an undivided Hindu family cannot be deemed to be co-parceners under the principles of Hindu law of joint families though they can be deemed to be members thereof.

NOTE:—The word "person" occurring in *Explanation* I has not been defined in this Act though it had been defined in S. 2 (8A) of the old one as including "an undivided Hindu family". That too was not a complete definition. The definition in S. 3 (35) of the *Bombay General Clauses Act, 1904* as including any company, association or body of individuals, whether incorporated

or not" which is the only one now available for interpretation includes as well an undivided Hindu family as a firm of traders, a joint stock company, a co-operative society, a corporation etc.

(15) The general provision contained in this clause for assigning to words and expressions used but not defined in this Act the same meanings as they have in the *Civil Procedure Code, 1908* or the *Bombay Land Revenue Code, 1879*, as it may be relevant, is in the same terms as a similar one in S. 2 (16) of the old Act which has been elaborately commented upon at pp. 57 to 60 of the Commentary on that Act. Reference may therefore be made thereto in case of necessity.

3. Save as otherwise expressly provided, nothing in this Act shall affect the debts and liabilities of a debtor falling under the following heads, namely :—

Savings.

(i) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,

(ii) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,

(iii) any sum due to a co-operative society,

(iv) any sum advanced solely for the purpose of financing of crops as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act,

(v) any sum due under a decree or order for maintenance passed by a competent Court, and

(vi) any sum due to a scheduled bank.

#### COMMENTARY

*Scope of the section and changes in the law:*—This section relating to Savings corresponds to S. 3 of the old Act which has been

commented upon at pp. 61-64 of the Commentary on that Act. It is not however in exactly the same terms. It embodies certain substantial and certain formal changes in the law as noted below:—

I. *Main provision*:—(1) The first change that we can notice is the omission of the words *in this Act*, which occurred, in the first part of the sentence constituting the main provision, after the word *provided*;

(2) The second is that the numbers of certain specific sections which had been mentioned after the words *nothing in* have been omitted and in their place the words *in this Act* have been substituted;

II. *Description of the heads (iii) to (vi)*:—(1) One general change in all those heads except (v) is that the initial words *any liability in respect of* which preceded the words *any sum* have been omitted;

(2) The words *sum due* have been substituted for the word *liability* in head (v).

(3) The following additional changes have been made in heads (iv) and (vi), namely:—(a) the words and figures *after 1st January 1939* which occurred between the words *advanced* and *solely* in that head have been omitted; (b) the words *as provided in the repealed Act or for the purpose of seasonal finance as provided in this Act* have been added after the word *crops*; (c) the proviso to that head which had been added by the Act of 1945 has been omitted and (d) the word *any* which preceded the words *scheduled bank* in head (vi) has been replaced by the indefinite article *a*; and

III. *Explanation to the section*:—The whole of this *Explanation* in which the word *tax* as occurring in the heads (i) and (ii) had been defined has been omitted.

*Legal effect of the changes*:—I. The combined effect of the changes made in the main provision is that whereas under the old Act the debts and liabilities mentioned in the following six heads thereof were excluded from the operation of the specific

sections mentioned therein *except as otherwise expressly provided in this Act*, under the present Act they are excluded from the operation of the whole of *this Act except as otherwise provided*. Such express provisions as nullify the effect of this general saving-clause in the present Act are contained in (1) S. 4 (3) which corresponds to S. 22 (3) of the old Act; (2) S. 26 (3) to (5) which correspond to S. 47 (3) to (5) with some slight variations; (3) S. 32 (2) (iii), (iv) together with its *Explanation*, (v) and (vi) corresponding to S. 54 (2) (g), (h) together with the proviso and *Explanation* thereto, (i), and (j) together with the proviso thereto and (4) the proviso to S. 38 (3) corresponding to the second proviso to S. 63 of the old Act. It is somewhat doubtful whether the reference to S. 32 (2) (iii) in S. 49 can be construed into an *express* or an implied provision. My personal view is that the prescription of the same order of priority for the distribution of assets as is laid down for the payment of debts under an award is tantamount to an *express* provision in this Act creating *exception (5)* to the general saving-clause in S. 3.

There seem to be no more express provisions in this Act nullifying the effect of the general provision in this saving-clause. But since the words *in this Act* which existed in the old Act between the words *provided* and the comma have been omitted and added after the word *nothing* any provision to the same effect in any other Act of this Legislature or of the Central Legislature, if any, remains unaffected by anything contained in this Act.

Moreover as it is only the *express* provisions to the contrary in this Act that will have the said effect, there is left no scope for any implied provisions therein to have the same effect. This is likely to create some difficulties. Thus for instance, if a case for re-opening an award and re-adjustment of debts as provided in S. 37 arises and the Court decides to exercise its powers under that section, the whole of the award which would include the payment of debts specified in heads (i) to (vi) mentioned in S. 3, would have to be held up and re-made and though the amounts payable to them and their position in the order of priority may be left

undisturbed, the amount of instalments payable to them and the property available for sale would *ipso facto* be affected by the revision. It is again the whole award as made under S.32 that would have to be sent for registration under S. 38 (1) and although by virtue of the proviso to S. 38 (3) the Provincial Government, local authority or co-operative society concerned may not have to apply to the Court for the execution of the award, the creditors mentioned in heads (iv) to (vi) will have to do so. In the same manner if the Court or the Court in appeal deems it proper to exercise its power under S. 41 for ordering an interim sale of a property of the debtor, the creditors referred to in S. 3 would necessarily be affected indirectly thereby. Similarly their interests would be affected one way or the other by the Court acting in the exercise of its powers under SS. 17, 24-25, 28, 29, 30, 31, 32, 35, 39 and 40. The same would be the case if any of the debtors or any of the other creditors appeals against any of the orders mentioned in clauses (i) to (v) of S. 43 or of the awards mentioned in clause (vi) thereof and the Court in appeal modifies or sets aside any order or award or if the Court in the exercise of its discretion under S. 47 (1) adjudicates a debtor an insolvent and directs the sale of his property as provided in S. 47 (2). The provision in S. 49 leaves to my mind no doubt as to its being tantamount to an express provision in this Act contrary to the terms of the general provision in S. 3. However so far as action under S. 47 or S. 48 is concerned, the effect thereof on the amounts payable to the creditors referred to in S. 3 is inevitable and must be deemed to be due to an implied provision to the contrary in Chapter III. As regards SS. 50-51 I believe all the creditors mentioned in heads (i) to (vi) of S. 3 are as much intended to be debarred from filing an insolvency application in any other Court and an appeal against any order made under that chapter except on the ground mentioned in S. 51 as the ordinary creditors. This too cannot be deemed to be the effect of an express provision in this Act contrary to the terms of the saving-clause in S. 3.

Lastly, it seems to me very doubtful whether any of these privileged creditors can file an appeal against any of the orders and

awards mentioned S. 43 even if their debts and liabilities are indirectly affected in any of the above cases. It was not so under the old Act because S. 9 was not one of those from the effect of the operation whereof they were exempted. Did the Legislature intend that they might pursue their own remedies under any other enactment in force including that of filing suits under S. 9 of the *Civil Procedure Code*, 1908, the restriction on which laid by S. 73 of the old Act, has been removed by the absence of a similar one in this Act?

## CHAPTER II

### PROCEDURE FOR ADJUSTMENT OF DEBTS

4. (1) Any debtor ordinarily residing in any local area for which a Board was established Application for adjustment of debts. under section 4 of the repealed Act on or after the 1st February 1947, or his creditor may make an application before the 1st August 1947 to the Court for the adjustment of his debts.

(2) Every application made under sub-section (1) shall be in writing in the prescribed form and shall be signed, verified and presented in the prescribed manner.

(3) Notwithstanding anything contained in section 3 an application made under this section shall contain the amounts and particulars of all debts, specified in that section, due by the debtor.

### COMMENTARY

*Scope of this chapter* :—This, the second chapter of this Act, corresponds to Chapter III of the old Act, broadly speaking. I say so because besides containing all the provisions that were decided to be re-enacted in one form or another out of those contained in the latter, it also contains S. 43 which in a modified form contains

provisions of the same nature as were contained in SS. 9 and 14 of the old Act which formed part of Chapter II of that Act, S. 44 which again contains in a modified form the provisions of the same nature as those contained in S. 11 of the said Act forming part of the same chapter thereof and two quite new sections, namely 36 and 45, relating to matters not provided for in any part of that Act. The title of the third Chapter of that Act which has been transferred to it is however quite appropriate in view of its contents. As for the details of the provisions contained in it as compared with those of Chapter III of the old Act, it contains in all 43 sections (4 to 46) and if the two new ones, 36 and 45, are excluded, 41 sections only as against the 52 (17 to 67A) contained in the third chapter of the old Act. The following is a comparative table showing at a glance which section or portion of a section in this chapter corresponds to which one in Chapter III of the old Act.

COMPARATIVE TABLE

Ch. II of the Act of 1947.	Ch. III of the Act of 1939.
S. 4 (1).	S. 17 (1) to (3) with modifications.
S. 4 (2).	S. 18 (1) and partly R. 16 with slight modifications.
S. 4 (3).	S. 22 (3) with a slight modification.
S. 5 (1).	S. 19 (1) with slight modifications and the addition of a proviso.
S. 5 (2).	S. 19 (2) with only a consequential change.
S. 5 (3).	S. 19 (3) with some modification.
S. 6 (1).	S. 20 with only a consequential change.
S. 6 (2).	<i>Entirely new.</i>
S. 7.	S. 21 with slight changes.
S. 8 (1) to (5).	S. 23 (1) to (5) with certain changes.
S. 9.	S. 24 with some changes.
S. 10.	S. 25 with changes.
S. 11.	S. 26 "
S. 12.	S. 27 with consequential changes.
S. 13.	S. 28 with an addition.

S. 14.	S. 31 with consequential and verbal changes.
S. 15 (1) and (2).	S. 32 (1) and (2) with consequential and verbal changes.
S. 16 (1) and (2).	S. 33 (1) and (2) with certain verbal and some consequential and one substantial change in sub-section (2).
S. 17 (1), (2) and (3).	S. 35 (1), (2), and (3) with certain verbal and other changes.
S. 18.	S. 36 with certain changes.
S. 19 (1) to (5).	S. 37 with several important changes.
S. 20.	S. 38 with certain changes.
S. 21.	S. 39 with slight verbal and consequential changes.
S. 22.	SS. 40, and 42 (1) and (2) with very important structural and material changes.
S. 23.	S. 44 with a slight consequential change.
S. 24 (1).	S. 45 (1) with very important substantial and structural changes consisting of additions and omissions.
S. 24 (2).	<i>Entirely new.</i>
S. 25.	S. 45 (2) (ii) and (iii) with important changes.
S. 26 (1) to (5).	S. 47 (1) to (5) with some substantial changes.
S. 27.	S. 48 with certain changes.
S. 28 (1) and (2).	S. 49 with substantial and structural alterations.
S. 29 (1) to (4).	S. 50 with structural and some substantial changes.
S. 30.	S. 51 considerably overhauled and simplified.
S. 31 (1) to (4).	S. 52 (1) to (4) with several structural and verbal changes.
S. 32 (1) and (2).	S. 54 (1) and (2) with several important structural changes.
S. 33 (1), (2) and (3).	S. 55 (1) and (2) with important structural and substantial changes.
S. 33 (4).	S. 55 (3) with a consequential change.
S. 34.	S. 53 (1) and (2) considerably abbreviated on making substantial omissions and alterations.
S. 35 (1) and (2).	S. 56 with some structural alterations and an important addition.



S. 36.	<i>No corresponding section.</i>
S. 37.	S. 57 with slight verbal and consequential changes.
S. 38 (1), (2) and (3).	SS. 61 (2), 62 (1) and (2) and 63 with certain consequential and structural and other material changes.
S. 39 (1) and (2).	S. 64 (1) and (2) with slight consequential changes.
S. 40.	S. 65 with some substantial and some structural modifications.
S. 41.	S. 66 with some structural and other substantial alterations and an important omission.
S. 42.	S. 67 with certain important omissions which remove the archaism existing in it, some important additions which make the law realistic and some consequential changes.
S. 43.	SS. 9 (1) and 14 consolidated and modified.
S. 44.	S. 18 (2) in a modified form, S. 23 (4) partly, S. 24 partly, S. 60 (1) with important modifications, and (2), and S. 11.
S. 45.	<i>No corresponding section.</i>
S. 46.	S. 7 considerably simplified, S. 13 and R. 35.

*Scope of the section :—*As the marginal note to it shows this section provides for the making and presentation of an application for the adjustment of the debts due by a debtor. It is sub-divided into 3 sub-sections.

*Sub section (1):—*This sub-section lays down who can make applications for adjustment of debts and within how much time, and to whom they should make them.

*The persons who can make them* are either:—(1) Any debtor ordinarily residing in any local area for which a Board was established under S. 4 of the repealed Act on or after 1st February 1947, or (2) his creditor. The elaborate provisions of S. 17 (1), (2) and (3) of the

old Act to which this sub-section corresponds have been compressed here into a few lines.

*Time within which to make them*:—Before the 1st August, 1947.

*The authority to whom to make them* :—The Court.

The word “debtor” has been defined in S. 2 (5) and the definition as there given has been sufficiently explained in the Commentary thereon. The areas for which Boards were established under the repealed Act have been enumerated in the Appendix II to the INTRODUCTION to that Act. The term “repealed Act” has been defined in S. 2 (9) hereof and that definition has been explained in the Commentary thereon. The word ‘creditor’ had not been defined in the old Act and has not been defined in this also. Obviously however it signifies any person or group of persons to whom or to whose predecessor in title a debtor is indebted. The date 1st February 1947 is the date from which D. A. Boards had been established by the Provincial Government in all the areas of the Province except the City of Bombay where they had not been established till then. The creditors mentioned in clauses (i) to (vi) of S. 3 are excluded from that category for the purpose of this Act because of the express provisions of that section except where there is another provision in that behalf to the contrary. The time for making applications under this section having been stated to be *before the 1st August, 1947*, it is clear that no such applications can be entertained after the midnight of 31 July 1947. If any are accepted in ignorance of this fact on or after 1st August 1947 they must be *returned* as time-barred not *rejected* because no other court can have jurisdiction to entertain them.

The term ‘Court’ has been defined in S. 2 (3) of this Act and that definition has been sufficiently explained in the Commentary thereon.

*Sub-section (2)* :—This sub-section prescribes how the application mentioned in the previous sub-section should be made. This had been done by S. 18 (2) of the old Act and partly by R. 16 of the old Rules. According to it it should be in writing and must be in the “prescribed” form and should be signed, verified and presented in the prescribed manner. “Prescribed” means according to S. 2 (8), prescribed by rules made under S. 55 (2), of which the relevant clause is (b).

*Sub-section (3):*—It is provided in S. 3 that the saving therein contained is to be operative *save as otherwise expressly provided*. That contained in this sub-section, which corresponds to S. 22 (3) of the old Act with a slight modification, is one of the express contrary provisions in contemplation while so framing the section.

According to it besides the other particulars that may be prescribed the application must contain those as to the debts and liabilities due to the claimants mentioned in the six clauses of the said section.

5. (1) Notwithstanding the fact that no application has been filed under section 4—

Every creditor and debtor to file a true and correct statement before Court. (a) every creditor, on being required to do so by notice in writing by any of his debtors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and

(b) every debtor, on being required to do so by notice in writing by any of his creditors, shall, within two months from the date of the receipt of such notice, file before the Court a true and correct statement—

(i) of all the debts owed by such debtor;

(ii) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(iii) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor;

Provided that the Court may, for sufficient cause, extend, from time to time, the period within which the creditor or the debtor, as the case may be, may file such statement.

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Court.

(3) In awarding the costs of any proceeding in respect of any application made under section 4 the Court may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein or within the period extended under the proviso to sub-section (1) or incorrectly filed, direct the party in default to bear the whole or any portion of the costs of such proceeding.

#### COMMENTARY

*Scope of the section* :—This section contains the same kind of provisions as the corresponding section 19 of the old Act with certain additions and alterations. That section has been commented upon at pp. 122-24 of the Commentary on that Act. It may therefore be referred to and read subject to the following modifications.

*Sub-section (1)* :—In the paragraph on the *Scope of the section* read the figure “4” in place of the figure “17” wherever it occurs.

(2). The paragraph headed *Time for getting the information* substitute the following:—*Time for supplying the information*. The creditor as well as the debtor has been allowed by the statute two months, time in which to reply to the notice served on him and both can, under the proviso which has now been added to this sub-section, get such further extensions of time as the Court may deem proper to grant from time to time on sufficient cause being shown to its satisfaction.

*Sub-section (2)* :—In place of the word “Board” read the word “Court.”

*Sub-section (3)*:—In place of the word “Board” read the word “Court” and in place of the figure “17” read the figure “4” and also *note* that under this sub-section the penalty of being required to bear the costs of the proceeding under S. 4 is incurred both when no statement is filed within the given time, which includes any subsequent extensions granted by the Court, under the proviso to sub-section (1) and when an incorrect statement is filed.

In the heading of the succeeding paragraph for the figure “23” read the figure “8” and in the paragraph itself for the figures “23” and “17” read the figures “8” and “4” respectively.

For the paragraph bearing the heading *This section and sections 26 and 86* substitute the following:—*This section and sections 11 and 56 (1) of this Act and SS. 85-86 of the repealed Act.* There were two sections in the repealed Act containing savings from the operation of the preceding sections thereof, namely 85 and 86. Thereout S. 85 (1) provided for the repeal of the *D. A. R. Act* in those areas in which or for the class of debtors residing in which D. A. Boards may be established under S. 4 of that Act, from the respective dates of their establishment but S. 85 (2) contained a saving-clause keeping inviolate acts done or suffered to be done, the rights which may have accrued, titles which may have been acquired, and obligations and liabilities which may have been incurred, before the aforesaid dates in the case of those persons who were debtors under the Act and in respect of whose debts applications under S. 4 thereof could be made. This saving was however subject to a counter-exception to the effect that if there was any suit, application for execution or proceeding pending in any civil or revenue court to which S. 37 was applicable, the said saving should not come in the way of its transfer to the Board concerned. S. 86 gave 3 years’ period for the filing of suits under the repealed Act by or against persons residing in the said areas in which the *D. A. R. Act* would cease to operate but who were not governed by the Act of 1939 owing the fact either that the person was not a debtor under the Act or that no application under S. 17 could be made by or against that person.

In this Act there is no section corresponding to S. 86 of the old Act but there is S. 56 (1) corresponding to S. 85 thereof which

protected the vested rights of or against debtors under the Act by or against whom applications under S. 17 could be made. By the said S. 56 (1) of this Act the *D. A. R. Act* will cease to be in operation throughout the province for all persons and all purposes on the expiry of three years from the date of coming into force of this Act. The first proviso thereto however keeps untouched anything done in the course of any proceeding pending in any court as instituted by or against the debtors of the above class on the said date and permits such proceedings to be continued in so far as such continuance is not inconsistent with the provisions of this Act. This means that if any proceeding by or against such debtors had been started in any Court under S. 85 (2) of the old Act, that proceeding may be continued even though 3 years may elapse from the date of coming into force of this Act. The second proviso however introduces an exception to that saving to the effect that if the proceeding is of such a nature that S. 19 corresponding to S. 37 of the old Act is applicable to it, that proceeding must be transferred for being dealt with under this Act, the saving in proviso 1 notwithstanding.

It may be remarked that the said saving relates merely to acts done in the course of any proceeding pending in any Court on the date of coming into force of this Act. That is the subject-matter of sub-clause (e) in S. 85 (2) of the old Act. It follows therefore that the saving proviso under consideration is not applicable to the subject-matters of sub-clauses (a) to (d) of the said S. 85 (2). Hence there is nothing to warrant the starting of any fresh suits or proceedings under the *D. A. R. Act* even as regards the debtors under this Act by or against whom applications can be made under S. 4 of this Act. The section under consideration, namely S. 5 of this Act, is not therefore likely to be of use for any future action after 3 years under the *D. A. R. Act* as the corresponding S. 19 of the old Act was.

6. (1) If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is

Application by  
debtor jointly and  
severally liable.

not a debtor the debtor may make an application under section 4 for relief in respect of such debt and the Court may, after consideration of the facts and circumstances of the case, proceed with the adjustment of debts under this Act in so far as such applicant is concerned.

(2) Whenever the debts due by a debtor which are guaranteed by a surety are adjusted under sub-section (1), the surety shall be discharged from liability in respect of the debts or portion of the debts of such debtor which are extinguished under sub-section (1) of section 15, sub-section (3) of section 17, sub-section (5) of section 26, section 34 or sub-section (2) of section 35 ; and the surety shall not be entitled to proceed against the debtor in respect of such debts or portion.

### COMMENTARY

*Scope of the section* :—This section takes the place of S. 20 of the old Act but its scope is much wider than that of the latter for it is sub-section (1) only of this section to which the said S. 20 of the old Act corresponds. Sub-section (2) is entirely new. The two sub-sections read together make the scope of the section comprise not only the Court's discretionary authority to grant relief to a debtor in respect of a debt the payment whereof is guaranteed by a surety who is not a debtor or for whose payment the debtor is responsible jointly and severally with another person but also (1) to give a discharge to the surety who has guaranteed payment of any of the debts of the debtor in respect of all such debts or portions of debts which may be held in that proceeding to have been extinguished by the operation of the provisions mentioned in the sub-section and (2) to prohibit that surety from proceeding against the debtor for the recovery of such debts or portion.

*Sub-section (1)* :—This sub-section corresponds to the whole of S. 20 of the old Act. The Commentary on the latter at p. 125 is

therefore applicable to it subject to the alterations that in place of SS. "17 (1)" and "2 (6)", in the first paragraph thereof SS. "4 (1)" and "2 (5)" are to be read, in the heading of the second paragraph the word "Board's" should be substituted by the word "Court's" and that in the heading and body of paragraph 3 in place of the words *This section* the words *This sub-section*, and in that of the figures "37", and "37 (1)" the figures "19" and "19 (1)" are to be read.

The ruling in *Musa Hasafji v. Keshavlal*<sup>1</sup> on which the whole of that paragraph has been based can be referred to for guidance even now so far as the mutual relation between SS. 6 (1) and 19 is concerned because that relation is the same as that between SS. 20 and 37 of the old Act and there are no substantial changes in their wording.

*Sub-section (2):*—This sub-section is made up of two new provisions. They are :—I. That when the debts secured by a surety are adjusted under sub-section (1), the surety shall be simultaneously discharged from his liabilities if any, in respect of all the debts due by the debtor which may have been declared to have been extinguished under the provisions of the following sections and sub-sections, namely :—(1) S. 15 (1) relating to the voidness of all debts in respect of which no application for adjustment or recording a settlement may have been made within the prescribed periods, or in respect of which any such application may have been made but withdrawn and no fresh one may have been made under S. 4 and any debt in respect of which a statement as required by S. 14 is not submitted to the Court after notice under that section ; (2) S. 17 (3) relating to the portion of the debts remitted by a creditor either singly or jointly with others in order to bring the debtor's case within the purview of S. 11 ; (3) S. 26 (5) relating to the portion of a debt remitted by the Collector, the co-operative society or the scheduled bank concerned and the debt or portion thereof in respect of which no statement as required by S. 26 (3) has been submitted by any of the above or by the local authority concerned or the person, if any, entitled to maintenance from the debtor ; (4) S. 34 relating to the amount of debt in excess of the debts scaled down ;



and (5) S. 35 (2) relating to a claim put forward by a creditor in collusion with the debtor with a view to defeat the lawful claims of any of his other creditors. II. That the surety concerned shall not be entitled to proceed against the debtor in respect of such debts or portion.

These provisions are clearly intended to obviate the possibility of the surety being required to file a suit for a declaration of extinction in connection with the debts or portions of debts which may have been extinguished under any of the five provisions above enumerated and to prohibit him from filing a suit for the recovery of any such debt from the debtor. So far as the surety's liabilities and rights are concerned these provisions take the place of S. 73 of the repealed Act corresponding to which there seems to be no other section in this Act.

7. No application shall lie under section 4 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after the 1st January 1938 by any person who is not himself a debtor.

Assignees from non-debtor not entitled to benefit of this Act.

#### COMMENTARY

*Scope of the section* :—Just as the previous section contained provisions empowering the Court to grant reliefs in certain cases not falling within the purview of S. 4 this contains a contrary provision debarring the Court from granting relief in a case falling within the purview of that section.

This section corresponds to S. 21 of the repealed Act and is in the same terms except for the following three changes, namely :—(1) the figure "17" after the word "section" has been replaced by the figure "4," (2) the definite article "the" has been added before the figure "1st" and (3) the words "if such debt was originally incurred" which occurred after the figure "1938" have been omitted. The first of them is only of a consequentital nature. The second ensures only linguistic accuracy and has no effect on the purport of the section. But the last constitutes a conscious material change and has the effect of widening the scope of the section so as to debar the Court from giving relief even in those cases in which the debts concerned may not have

been originally incurred by a non-debtor, *i. e. to say*, those in which even though the debts may have been originally incurred by a debtor and though the assignee may himself be a debtor but the assignment may have been made after the 1st January 1938 by an intermediate non-debtor.

Subject to these observations and to the substitution of the figures "17," and "2 (6)," wherever they occur in the Commentary on S. 21 of the old Act of p. 126, by the figures "4" and "2 (5)" and the word "remained" for the word "remains" in the last sentence thereof the said Commentary can be read as if had been written on the present section 7.

8. If any debtor and any or all of his creditors arrive at a settlement in respect of any debt due Application for recording settlement. by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement, make an application to the court for recording such settlement.

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner.

(3) On receipt of such application the Court shall, after giving notice to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and voluntary and is not made with intent to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor, and that the debtor is a person who fulfils the conditions referred to in clauses (a) and (b) of sub-section (1) of section 17, record such settlement and certify the same. Every such settlement so recorded and certified shall be binding upon the parties thereto

and shall not save as otherwise hereinafter provided, be re-opened.

(4) After the Court has recorded and certified a settlement under sub-section (3), the Court shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts, the Court shall make an award in terms of such settlement.

(5) If the Court is satisfied, after recording such settlement that there are other debts due from the debtor which are not included in the settlement, the Court shall treat the application made under sub-section (1) as an application for adjustment of debts under section 4.

### COMMENTARY

*Scope of the section* :—This section provides for an adjustment of a debt made without resorting to the remedy provided for in S. 4. It is here called a settlement of a debt and the provision here consists of the laying down of a procedure by which it can be got recorded and certified and if the interest of any other creditor is not involved or likely to be affected thereby, for getting an award made by the Court in terms thereof. It also contains an additional direction to the Court to treat the application under it as one made under S. 4 if the above condition is not satisfied.

It thus corresponds to S. 23 of the old Act which has been commented upon at pp. 131-35 of the Commentary on the old Act. Both are sub-divided into five sub-sections and the step in the procedure dealt with in each sub-section is also the same. There are however certain differences which are noted under each sub-section.

*Sub-section (1) :—*This sub-section is the same word to word upto the word “application” but thereafter the words “to the Court” have been newly-inserted and the provision stops at the word “settlement” in the last but one line, the words in the old one, “to the Board to which an application under section 17 lies,” having been omitted. This is thus only a change consequential upon the transfer of jurisdiction under the Act from the Board to the Court.

*Sub-section (2) :—*This sub-section too is the same word to word upto the end of the first sentence therein. The second sentence as to the payment of court-fee on an application under sub-section (1) has been incorporated in S. 44 (1) (i) of this Act.

*Sub-section (3) :—*This requires a more serious attention on account of the nature of the changes made in its wording at three places, besides substituting the word “Court” for the word “Board”, omitting the indefinite article “a” before the word “notice” and substituting the figure “4” for the figure “17” before the word “section”, all of which are necessary minor changes. The three major ones are:—(1) the insertion of the words “and voluntary” after the word *bona fide*, (2) that of the words “on the parties thereto” after the word “binding” and (3) that of the words “save as otherwise hereinafter provided,” between the words “shall not” and “be re-opened”. The result of the first change is that before proceeding to record and certify a settlement the Court must be satisfied not only that the settlement is *bona fide* but also that it is *voluntary*. The second change makes it clear that a settlement recorded and certified under this sub-section becomes binding on the parties thereto only. That it could not have any other result had been stated in the Commentary on the corresponding sub-section of the old Act and this insertion confirms that view. The third change is more substantial. In the old section there was an unqualified prohibition against re-opening a settlement recorded and certified under the third sub-section thereof. In addition to that the civil courts had, by S. 73 (ii), been prohibited from entertaining or proceeding with a suit regarding “the validity of any procedure or the legality of any award, order or decision of the

Board or of the Court" and that prevented an aggrieved party from filing a suit which might result in the re-opening of a settlement recorded and certified under the said sub-section. There is no independent corresponding section or sub-section in this Act. It was probably in order to prevent a suit of the above nature being filed with respect to either the validity of the procedure adopted while recording and certifying a settlement under the present sub-section or the legality of the decision arrived at with respect thereto or the order made with respect thereto in the record of the application that the additional words, "save as otherwise hereinafter provided" seem to have been inserted in this sub-section.

It is a point for consideration which is the provision referred to by this expression. S. 37 does not clearly apply to the case and there seems to be no other express provision to the contrary in any part of this Act including the two remaining sub-sections of this section. However since the word "expressly" is not placed before the word "provided" there is a scope for an implied provision of that nature and such an implied provision can be inferred from the wording of sub-section (5), for if, as the consequence of the finding that "there are other debts due from the debtor which are not included in the settlement", the application for recording a settlement is as a whole to be treated as one for the adjustment of the debts due by the debtor concerned, the recorded and certified settlement cannot remain inviolate and would be re-opened, and in that case the whole of the procedure laid down further up in this chapter would be applicable.

*Sub-section (4).*—This sub-section is the same as the corresponding old one so far as its first sentence is concerned except for the substitution of word "Court" for the word "Board" therein. As for the second sentence therein it makes it perfectly clear that if the debtor makes a declaration that there are no other debts due by the debtor, the Court is not expected to make any further inquiry but to proceed to make an award in terms of such settlement. This obviously means that the declaration of the debtor is intended

to be taken at its face value and if it is to the effect that there are no other debts, the Court must make an award in terms of the settlement. The inquiry necessary with a view to ascertain whether the settlement is *bona fide* or fraudulent having already been made before recording and certifying the settlement under sub-section (3), it is not necessary to make it afresh after the required declaration is made. The further words after the words "no such debts" in the same sentence were clearly unnecessary and have therefore been rightly deleted.

The provision as to court-fee contained in the third sentence in this sub-section has been incorporated in S. 44 (1) (i) of this Act.

*Sub-section (5)* :—This remains as it was in the corresponding section of the old Act except for (1) the substitution of the word "Court" for the word "Board" at the two places therein where it occurred; (2) the substitution of the figure "4" for the figure "17" after the word "section" and (3) the deletion of the words "made by it" occurring after the word "debts" and before the word "under" in the last line. The first two are changes of a consequential nature and the last does not affect the sense of the sentence while securing brevity.

From this sub-section as worded it is not clear how the Court is expected to be satisfied after recording the settlement that there are other debts when it is supposed to take a debtor's declaration at its face value and if the declaration is to the effect that there are no such debts.

Moreover the changes made in sub-sections (4) and (5) do not touch even the fringe of the criticism made with respect thereto in the concluding paragraph of the Commentary on S. 23 of the old Act printed at pp. 134-35 thereof. A case for the application for any of the *Rules as to filling up lacunae in an Act* and those as to *Implied provisions in a statute* may therefore arise in one court or another in the Province. If it does the said rules given at pp. 135-38 may be referred to.

*Appeals against orders and awards made under this section* :—This section provides for the passing of two kinds of orders, namely

(1) under sub-section (3) recording and certifying a settlement or refusing to do so and (2) under sub-section (5) for treating an application under this section as one under S. 4. The first of these is appealable under S. 43 (i) but not the second. But from the nature of that order it would necessarily be followed by an award under S. 32 (1) which is appealable under S. 43 (1) (vi). An award made under sub-section (4) is expressly excluded from its purview.

9. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before the Court or the Court in appeal, as the case may be, a settlement is arrived at between a debtor and all his creditors and if such Court is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, such Court may make an award in terms of such settlement.

Settlement during  
pendency of proceed-  
ings before Court.

### COMMENTARY

*Scope of the section* :—This section is the same as S. 24 of the repealed Act which has been commented upon at pp. 139-40 of the Commentary thereon, except for the few changes noticed below. The observations made under the same heading as the above may therefore be read with advantage.

The changes above referred to are :—(1) (a) The words “a Board” have been substituted by the words “the Court” and (b) the words “or the Court in appeal” have been newly-added thereafter; (2) the words “the Board” have been substituted by the words “such Court” at the two places in the section and marginal note where they occurred; and (3) the provision as to the payment of court-fee on the award to be made under this section has been omitted.

The substitution of the words referred to in (1) (a) and (2) is in keeping with similar changes throughout the Act. The provision

as to court-fee though omitted from this section has been incorporated in S. 44 (1) (i) of this Act. But the addition of the words "or the Court in appeal" confers for the first time an express power on the Court hearing an appeal under this Act to record a settlement arrived at during the course of an appeal provided the Court is satisfied that it is made by the debtor voluntarily and is for his benefit. Of course such a Court has an implied power also to do so under the *Civil Procedure Code, 1908*, the provisions of which have been extended to all proceedings under this Act by S. 46 thereof "save as otherwise expressly provided in this Act" and there is no such express provision to the contrary anywhere in this Act.

*Appeal or revision application against an award or order made under this section* :—By the express wording of S. 43 (1) (vi) an award made under this section is excluded from the category of those which are appealable under that clause of S. 43 (1). However a revision application would on that very ground lie to the High Court under S. 115 of the *C. P. Code* read with S. 46 of this Act.

An order refusing to make an award in terms of a settlement arrived at during the course of a proceeding for adjustment would not also be appealable because it is not on one of those expressly declared to be appealable by any of the clauses (i) to (v) of S. 43 (1). Nor is it an award falling under clause (vi) thereof. It would not therefore be appealable under any of the six clauses in that subsection of S. 43. The party aggrieved by such an order would however on that very ground be entitled to file a revision application to the High Court under S. 115 of the *C. P. Code* read with S. 46 of this Act.

10. Every settlement of a debt due from a debtor to any creditor, which is not certified by the Court under section 8, or in terms of which no award has been made under section 9, shall be void and shall not be recognised by any Court for any purpose whatsoever.

Certain settlements to be void.



## COMMENTARY

*Scope of the section* :—The marginal note to this section gives a fair idea of its scope although it is not exhaustive. Its full scope is to declare all those settlements void for any purpose whatsoever which do not fall under any of the two categories mentioned therein, namely (1) those which may have been certified by the Court under S. 8 though not followed by awards and (2) those in terms of which no awards may have been made under S. 9.

Compared with the phraseology of the corresponding S. 25 of the old Act that of this section is more precise and comprehensive. It has also the merit of avoiding unnecessary prolixity. It brings within its purview all settlements not falling in any of the two categories, whenever arrived at and prohibits any Court whatever from recognising such void settlements, not for any particular purposes only but, “for any purpose whatsoever”.

For the provisions of the corresponding S. 25 of the old Act and the comments thereon see pp. 140-41 of the Commentary on that Act.

11. No application under section 4 or 8 shall be entertained by the Court on behalf of or

Application under section 4 or 8 to be made only in respect of debtor whose debts are not more than Rs. 15,000.

in respect of any debtor, unless the total amount of debts due from him on the date of the application is not more than

Rs. 15,000.

## COMMENTARY

*Scope of the section* :—The marginal note to this section, corresponding to S. 26 of the repealed Act, which is commented upon at pp. 141-43 of the Commentary thereon, seems to convey an idea that this section prohibits parties from making any application under S. 4 or S. 8 unless the condition mentioned therein is satisfied in

the case of the debtor concerned therein. As worded however, it debars the Court from entertaining any application which does not satisfy the said test. Therefore it casts a duty on the Court to see that the condition laid down in this section is fulfilled in the case of the debtor in the application and if it is not, prohibits it from entertaining such an application. For the procedure to be followed in its case see S. 17 *infra*.

Between the wording of this section and S. 26 of the old Act the points of difference are :—(1) the words “claimed as being,” between the words “debts” and “due” are omitted ; (2) the words and figure “1st January 1939” have been substituted by the words “the date of the application” ; and (3) the whole of the proviso has been dropped. These are there, of course besides the formal ones as to the substitution of the figures, “17” and “23” by the figures “4” and “8” and that of the word “Board” by the word “Court”.

*Remedy against an order dismissing an application* :—An order of dismissal of an application made under S. 17 is one of the orders mentioned in S. 43 (1) (ii) of this Act. It is therefore clear that on appeal lies against it.

*Date of the application* :—Under the provisions of S. 26 of the old Act read with the proviso added by the amending Act of 1945, (for which see, if necessary, p. 145 of the Commentary on the said Act), the date upto which the calculation of the total liabilities of the debtor was to be made for ascertaining whether it did or did not exceed the statutory maximum limit of Rs 15,000 was 1st January 1939 in the case of the applications made to the Boards established before the Amending Act of 1945 and the date of establishment of the Board concerned in the case of those made to those established from the date of the coming into force of the said amending Act. Thus in the case of those of the former class there was a fixed statutory date and in that of the latter a date fixed upon by the Provincial Government for the establishment of

the Board concerned. In the case of their applications which will be made till 31st July 1947 under S. 4 of this Act to the Courts having ordinary jurisdiction in the areas in which Board had been established on or after 1st February 1947, the date upto which calculation for determining the said issue will have to be made is the date of the application, *i. e. to say*, any date falling between 1st February 1947 and 31st July 1947. This means that the applicants under this Act are given the right to decide for themselves the date for the above purpose, within of course the two limits of the date of coming into force of this Act and the last date for making applications under S. 4 of this Act.

12. An application for adjustment of debts under section 4 or an application for recording

Withdrawal of applications. of a settlement under section 8 shall not be withdrawn without the leave of the Court.

COMMENTARY

*Scope of the section* :—This section is word to word the same as the corresponding S. 27 of the repealed Act which has been commented upon at pp. 144-45 of the Commentary on that Act. The observations contained in the said comments may therefore be read subject to the substitution of the word "Court" for the "Board" and of the figures "4" and "8" for the figures "17" and "23" occurring in the paragraph on *The scope of the section* and in that on *This section and section 32* and that of the figures "15" and 15 (1) for the figures "32" and "32 (1)" in the heading and body respectively in the latter paragraph.

*This section and section 46.*—It may be noted that provisions of the *Civil Procedure Code, 1908* have been made applicable to all the proceedings under this Act "save as otherwise expressly provided in this Act." The prohibition against the withdrawal of an application made under S. 4 or S. 8 is one of the express provisions to the contrary referred to in that saving-clause. It will therefore have a preponderating weight as against Or. XXIII. r. 1 in Schedule I to the *Code*.

13. Where two or more applications for adjustment of debts under section 4 are presented by or against the same debtor, all such applications shall be consolidated. Where such separate applications are presented against joint debtors, all such applications shall be heard together.

#### COMMENTARY

*Scope of the section.*—This section is the same as S. 28 of the repealed Act which has been commented upon at p. 145 of the Commentary on that Act, with this difference that whereas the latter directed both kinds of applications under 17, corresponding to which there is S. 4 here, to be consolidated, this section directs such applications against individually-liable debtors only to be consolidated and such applications against joint debtors to be heard together.

There is a distinction between the two directions and it is this that whereas applications which are consolidated are treated as one and disposed of by one award, decision or order, those which are heard together can be treated as one for recording evidence in one of them but must be treated as separate ones for the purpose of awards, decisions or orders though based on the evidence recorded thus.

14. On receipt of an application for adjustment of debts the Court shall—

Service of notice on debtors and creditors to submit statement of debts. (a) give notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application, and

(b) publish a general notice, requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of service of the notice or the publication of the general notice, whichever is later :

Provided that if the Court is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein it may extend the period for the submission of the statement.

### COMMENTARY

*Scope of the section read with S 45.*—This section is the same as S. 31 of the repealed Act except for the substitution of the words “the Court shall” for the words “the Board shall in the prescribed manner” in the initial portion of the sentence constituting the main provision. This change would have been a mere consequential one if only the word “Board” had been substituted by the word “Court”. As it is, it dispenses with the necessity, so far as this section is concerned, of serving the notices “in the prescribed manner” which according to S. 2 (8) means in the manner prescribed by the rules. But in place of such a provision in this section so far as the notices to be issued under it are concerned, the Act contains a general provision in S. 45 for serving all notices according to the provisions in that behalf contained in the *Civil Procedure Code, 1908* so long as no rules are framed in that behalf and after they are framed, in the manner prescribed by them. This change in procedure makes no difference in the substantive provision. It therefore remains the same as in S. 31 of the old Act which has been commented upon at pp. 148-49.

There being no section in this Act corresponding to S. 16 of that Act, the comparative note with reference thereto at p. 149 of the said Commentary need not be read. That on the same and the next pages with reference to S. 32 of that Act, to which S. 15 of this Act corresponds, does not however lose its utility because the latter is in substantially the same terms as the section of the old Act after its amendment in 1945. Lastly, the rules of interpretation given at pp. 150-57 of the said Commentary also remain useful because they are of a general nature and have been based on reported decisions.

NOTE that the marginal note to this section refers to the service of notice on creditors also to whom that to S. 31 of the old Act did not refer.

15. (1) Every debt due from a debtor in respect of which no application has been made under section 4 within the period specified in the said section 4 or in respect of which no application for recording a settlement is made under section 8 within the period specified in the said section 8 or in respect of which an application made to the Court is withdrawn under section 12 and no fresh application is made under section 4 and every debt due from such debtor in respect of which a statement is not submitted to the Court by the creditor in compliance with the provisions of section 14 shall be extinguished.

(2) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act or that no application under section 4 can be entertained in respect of any debt owed by such person to such creditor by reason of the provisions of section 11.

#### COMMENTARY

*Scope of the section* :—This section too is in substantially the same terms as the corresponding S. 32 of the repealed Act. The only changes that seem to have been made are :—(1) words “who ordinarily resides etc” which followed the word “debtor” in the first line have been omitted ; (2) the references to SS. 17, 23, 27 and 31 in sub-section (1) and to SS. 17 and 23 in sub-section (2) have been replaced by those to SS. 4, 8, 12 and 14 in the first and to SS. 4 and 11 in the second ; (3) the reference to sub-section (1) of S. 17 in connection with

the period for making an application in sub-section (1) has been replaced by that to S. 4; (4) the "Board" as occurring at two places in sub-section (1) has been replaced by the word "Court"; (5) the words "deemed to have been duly discharged" which followed the words "shall be" at the end of sub-section (1) have been replaced by the single word "extinguished"; (6) the conjunctive particle "and" which occurred between the description of the two kinds of belief mentioned in sub-section (2) has been substituted by the disjunctive particle "or"; and (7) the words "by any Board" which existed after the word entertained in the same sub-section have been omitted. Formidable as this list of changes may appear to be, the only one that has an effect on the nature of the provisions contained in the section is No. 6, the rest being all formal. Therefore the observations on the *Scope of the section* and the nature of the provisions in *sub-section (1)* at pp. 152-54 of the Commentary on the repealed Act may be read subject to the formal alterations. As for those made on the nature of the provisions of sub-section (2) under the headings *Principle of estoppel in this sub-section* at pp. 154-55 of that Commentary and *Significance of the word Omission* at p. 156 hold good subject to the same alterations. As for those in the paragraph commencing with the heading *Sub-section (2)* they will have to be read subject to the additional alteration that in place of the word "and" between the figure "2 (6)" and the word "that" in the 7th line of that paragraph the word "or" should be read. Moreover the whole of the criticism made in the paragraph at pp. 155-56 commencing with the heading *Significance of the word "and" in line 5 of this sub-section* which was justified in the circumstances existing till this Act was passed, is now rendered unnecessary because the word "and" has been now replaced by the word "or" as suggested in that criticism. The following paragraph should therefore be read in its place :—

*Significance of the disjunctive adverb "or" between two kinds of belief.*—It is remarkable that the conjunctive adverb "or" has been substituted for the conjunctive adverb "and" between the two kinds of belief described in this section. The legal effect thereof

is that under the present Act what a creditor is required to prove in order to get the benefit of the clause in the nature of an estoppel in sub-section (2) is (1) that the debtor had by his declaration, act or omission made a representation (a) either that he was not a debtor under this Act or (b) that no application under S. 4 can be entertained in respect of his debts by reason of the provisions of S. 11, (2) that he believed the representation to be true and acted upon it and (3) that the result thereof was that the time for making an application by him under S. 4 had expired.

16. (1) Every debtor by or against whom an application is made under section 4 or who <sup>Duties of debtors and creditors.</sup> is a party to an application made under section 8 shall produce all books of accounts and shall give such inventories of his property and such lists of his creditors and debtors and of the debts due to and from him, submit to such examination in respect of his property or his creditors, attend at such time before the Court, and generally do all such things as may be required by the Court or as may be prescribed.

(2) It shall be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor and the securities held by him, as may be required by the Court or as may be prescribed.

#### COMMENTARY

*Scope of the section.* —This section is the same as S. 33 of the repealed Act subject to the following alterations, omission and addition, namely :—(1) the figures “17” and “23” occurring in sub-section (1) have been replaced by the figures “4” and “8”; (2) word “Board” occurring at several places in sub-section (1) and once in sub-section (2) has been replaced by the word “Court”; (3) the words



"in relation to his property" which followed the words "do all such things" in the last portion of the single sentence constituting the entire sub-section (1) have been omitted; and (4) the words "and the securities held by him" have been added after the words "due to him by the debtor" and before the words "as may be required" in sub-section (2).

So far as the alterations are concerned they are only of a consequential nature. The omission makes the scope of sub-section (1) somewhat wider because thereby a duty is cast upon the debtor to obey all such orders to do particular acts as the Court may think fit to pass against him, even though the acts mentioned therein may not have any relation to his property. Lastly, the addition makes scope of sub-section (2) wider because it casts a duty on the creditor to supply such information as the Court requires not only with respect to the debts owed to him by the debtor but also with respect to the securities, if any, held by him.

It is clear that the marginal note to the section of the old Act was very defective for, (1) it referred only to the duties of the debtor, sub-section (2) defines the duty of the creditor also and (2) it specifically referred to the nature of the duties in the words "to attend etc." which was unnecessary. Both these defects have been removed from the marginal note to the present section.

Subject to these changes the comments on the said section at pp. 157-58 of the Commentary on the old Act may be read as comments on this section.

17. (1) On the date fixed for the hearing of an application made under section 4, the Preliminary issues. Court shall decide the following points as preliminary issues :—

(a) Whether the person for the adjustment of whose debts the application has been made is a debtor;

(b) Whether the total amount of debts due from such person on the date of the application exceeds Rs. 15,000.

(2) If the Court finds that such person is not a debtor or that the total amount of debts due from such person on the date of the application is more than Rs. 15,000, the Court shall dismiss the application forthwith :

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors due from such person on the date of the application to a sum not exceeding Rs. 15,000. In such case the Court shall not dismiss the application but shall proceed further with the same.

(3) The portion of the debts in respect of which the claim is remitted under sub-section (2) shall be extinguished.

### COMMENTARY

*Scope of the section* :—This section corresponds to S. 35 of the old Act, which has been commented upon at pp. 162-65 of the Commentary on that Act, with the following changes made therein. The old section consisted of 4 sub-sections. Thereout the first three have been re-enacted as sub-sections (1), (2) and (3) only after making the changes therein noted below and sub-section (4) and the proviso to the whole section added by the amending Act of 1945 have been omitted. These omissions are consequential on the change, in the date upto which the total amount of debts is to be calculated, made in sub-section (1) (b), sub-section (2) and the proviso thereto. The change in the figure of the section in the introductory part of the sentence constituting sub-section (1) from "17" to "4" is consequential on the altered position of this section in this Act and the substitution of the word "Board" by the word "Court" in sub-sections (1) and (2) and the proviso to the latter is consequential on the transfer of jurisdiction under this Act from the Board to the Court. Besides these there are certain

changes in the phraseology of sub-section (1) (b), and sub-section (3) and the omission of the words "claimed as being" which occurred in sub-section (2) and the proviso thereto, which however do not make any change in the purport of the provisions contained therein. The only important change is the change in the date which deserves to be noted carefully.

*Date upto which the total amount of debts is to be calculated under this section:*—The change in the law as contained in this section is of the same nature as that made in S. 11 as compared with S. 26 of the old Act, which has been fully explained in the comments under the heading *Date of the application* in the Commentary on that section. Reference may therefore be made to those comments.

Subject to these changes and that in the law as to appeals noted below the comments on S. 35 of the old Act generally and sub-sections (1) to (3) thereof hold good and may therefore be referred to in case of necessity bearing in mind the changes in the numbers of the sections and sub-sections referred to therein. The comparative table given in the beginning of this chapter will be found useful for that purpose. Those sections or sub-sections of the old Act which are not found therein must be deemed to have no corresponding provision any where in this Act e.g. S. 2 (12) and (14) which contained the definitions of "secured debt" and "unsecured debt".

*Appeals against orders made under this section:*—Under S. 9 (1) of the old Act only a decision under S. 35 (2) dismissing an application was appealable. Under S. 43 (1) (ii) of this Act however "every order passed under S. 17" is appealable, which means that even an order to proceed further with the application under the proviso to sub-section (2) or one declaring a portion of the debts extinguished under sub-section (3) is appealable.

18. If an application made by a creditor under section 4 is dismissed under section 17

Court-fee to be refunded to creditor. on the ground that the total amount of the debts due from a debtor on the date

of the application is more than 15000, the Court shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

### COMMENTARY

*Scope of the section* :—S. 36 of the old Act has been re-enacted by this section after making the consequential changes as to the word “Board” and the numbers of the sections and one material change which is that of the date referred to therein. That change is of the same nature as that made in SS. 11 and 17. For its explanation see the Commentary on S. 11 under the heading *Date of the application*. Subject to these changes the Commentary on S. 36 of the old Act at pp. 165-66 may be referred to whenever necessary. Even the observations made therein as to the *Remedy of the creditor whose application is dismissed under S. 35 (2)* are still pertinent and may with advantage be referred to and made use of, bearing in mind that the place of S. 35 (1) and (2) is taken by S. 17 (1) and (2), that there is no provision in this Act corresponding to that in S. 86 (a) of the old Act but that S. 73 which contained a bar as to the entertainment of a suit or proceeding as to the legality of a decision etc. is also not re-enacted except partially as in S. 6 (2) and that the place S. 9 (1) is taken by S. 43 (1) and that of S. 14 by S. 43 (3) of this Act with some modifications.

19. (1) All suits, appeals, applications for execution and proceedings other than revisional in

respect of any debt pending in any civil or revenue court shall, if they involve the questions whether the person from whom such debt is due is a debtor and whether the total amount of debts due from him on the date of the application exceeds 15,000, be transferred to the Court.

Transfer of pending suits, appeals, applications and proceedings to the Court.

(2) Where any application for adjustment of debts made to a Court under section 4 or a statement submit-

ted to a Court under section 14 includes a debt in respect of which a suit, appeal, application for execution or proceeding other than revisional is pending before a civil or revenue court, the Court shall give notice thereof to such other court. On receipt of such notice, such other court shall transfer the suit, appeal, application or proceeding, as the case may be, to the Court.

(3) When any suit, appeal, application or proceeding is transferred to the Court under sub-section (1) or sub-section (2), the Court shall proceed as if an application under section 4 had been made to it.

(4) If the Court to which any suit, appeal, application or proceeding is transferred under sub-section (1) or sub-section (2), decides the preliminary issue mentioned in clause (a) of sub-section (1) of section 17 in the negative or that mentioned in clause (b) of the said sub-section (1) in the affirmative, it shall retransfer the suit, appeal, application or proceeding to the court from which it had been transferred to itself, after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed for an appeal where no appeal is filed.

(5) When any suit, appeal, application or proceeding is retransferred to the court under sub-section (4), the said court shall proceed with the same.

#### COMMENTARY

*Scope of the section* :—This section corresponds to S. 37 of the Act of 1939 as amended by S. 15 of the amending Act of 1945 with certain important modifications which have been noted and explained

below. That section of the Act of 1939 has been commented upon at pp. 169-79.

The original division of the section into five sub-sections has been adhered to, the subject-matters dealt with in each of them also remain the same but the changes which have been introduced in the internal structure thereof are not only those required by the transfer of jurisdiction under the Act from the Board to the Court and the change in the numbers of the corresponding sections of the Act referred to therein but also some important additional ones, namely (1) the words "the relevant date" in sub-section (1) have been substituted by the words "the date of the application" and the *Explanation* of the former has been omitted; (2) the word "appeals" has been inserted between the words "suits" and "applications for execution" in sub-section (1), the word "appeal" between the words "suit" and "application for execution" in sub-section (2) and the same word between the words "suit" and "application" in sub-section (3), (4) and (5) and the words "other than revisional" have been added after the word "proceedings" in sub-section (1) and the word "proceeding" in sub-section (2); (3) the words "for the recovery of" which existed before the words "any debt" in sub-section (1) have been substituted by the words "in respect of"; (4) the words "against a person" which followed the words "any debt" in sub-section (1) have been omitted and instead of them the words "such person" which occurred in the wording of the first question mentioned therein have been substituted by the words "the person from whom such debt is due"; (5) the words "at any time" which followed the word "pending" and the words "under the Act" which followed the word "debtor" in the same sub-section have been omitted altogether; (6) the word "other" has been inserted between the words "such" and "Court" and the words "the Court" have been substituted by the words "such other court" in sub-section (2); (7) the definite article "the" which existed in the same sub-section between the words "on" and "receipt" has been omitted; (8) the word "issues" occurring after the word "preliminary" in sub-section (4) has been replaced by the word "issue", the word "clause (a) of" have been inserted between the words "mentioned in" and "sub-section (1)" and the words and figure "or that mentioned

in clause (b) of the said sub-section (1) in the affirmative" have been inserted after the word "negative" in the same sub-section; (9) the words and figure "in section 10" which followed the word "prescribed" and preceded the words "for an appeal" have been omitted; and (10) the word "said" has been inserted in sub-section (5) between the words "the" and "court".

NOTE that the word "person" has not been defined in this Act as it had been in S. 2 (8A) of the old Act. Its definition given in S. 3 (35) of the *Bombay General Clauses Act, 1904* is however available for its interpretation. As to that see the comments on S. 2 (14) *Explanation 1 supra*.

These changes are, as said above, in addition to those which were required by the change in the administrative machinery and in the numbers of the other sections referred to in all the sub-sections except no. 5. In spite of their large number the only ones that affect the scope of this section are nos. (1), (2), (3) and (5). As for the first thereof it is of the same kind as that noticed and explained under the heading *Date of the application* in the Commentary on S. 11 of this Act which may therefore be referred to for an explanation. The second widens the scope of this section by including within its purview the appeals pending in any civil or revenue court which satisfy the tests laid down in sub-section (1). That being so such appeals are also liable to be transferred by the courts in which they were pending at the date of coming into force of this Act. The marginal note to the section has been amended accordingly. The addition of the words "other than revisional" after the word "proceeding" on the other hand, restricts the scope of the section because without them the revisional applications which may be pending in the High Court would fall within the purview of the section as such applications can be deemed to be "proceedings" as defined by the Lahore High Court in the case of *Murad v. Lala Hansraj*<sup>1</sup> and as a High Court is a "civil court". The replacement of the expression "for the recovery of any debt" by the expression "in

respect of any debt" again widens the scope of the section so as to bring within its purview suits etc. other than those filed by creditors for the recovery of their dues, such as suits for the redemption of mortgages, for taking accounts of monetary transactions under the provisions of the *D. A. R. Act* and most probably those for the recovery of possession of mortgaged property under mortgage-deeds, or even rent-notes or oral agreements of lease if the persons in possession are the owners of the properties and those claiming possession of them are their mortgagees, for in such cases it cannot be denied that they are "in respect of" a debt, ultimately though not immediately. The same would be the case with applications for execution, appeals and miscellaneous proceedings, other than revisional, following upon such suits, for the same reason. Such being the case the remark made in the last paragraph at p. 177 and foot-note 24 must be deemed to be inappropriate in the present state of the law. Lastly, the omission of the words "at any time" after the word "pending" in sub-section (1) makes it definite that what were intended to be transferred under this section were only those suits, appeals, applications for execution and proceedings other than revisional which were pending in any civil or revenue court at the date of coming into force of this Act provided they satisfied the tests laid down in the sub-section, not also any such as may be filed subsequent thereto. To such cases S. 19 (2) would however be applicable and under it the Court can issue a notice if the fact of their being filed is brought to its knowledge either by an application under 4 or from a statement filed under S. 14.

NOTE that if *the Court* is the civil court concerned in this matter it has to issue a notice to itself and act upon it. Also note further that the notice to be issued under S. 19 (2) is to be served according to S. 45 in the manner provided in that behalf in the *Civil Procedure Code, 1908* until rules are framed and thereafter as prescribed by the rules. This is a notice to the court before which the matter is pending. Neither sub-section (1) nor sub-section (2) provides for a notice being served on the parties as did



the second paragraph of the original section 37 for which see the foot-note at p. 168.

*Appeal or revision application against an order under this section*:—A reference to S. 37 of the old Act as it stood prior to the amending Act given in the foot-note at p. 168 and the comparative table given at pp. 170-71 will show that the section as it originally stood contained at the end of paragraph 1 a sentence to the effect that the decision of the civil court on any of the two questions mentioned in that paragraph shall be final but that there was no such sentence in the sub-section (1) of the section which was substituted for its first paragraph by the Act of 1945. Its absence from sub-section (1) of the present section also may be noticed. That however makes no difference. S. 43 (1) does not contain any clause showing that any order passed under S. 19 is appealable. A revision application would however lie to the High Court against an order made under it according to the provisions of S. 115 of the *Civil Procedure Code, 1908* because it would be the order of a civil court and it would not cease to be so even if the presiding Judge thereof is invested with the powers of "the Court" under this Act.

20. If the Court finds the person making an application under section 4 or the person against  
Taking of accounts. whom an application is made under the  
said section 4 to be a person—

(a) who is a debtor, and (b) the total amount of debts due from whom on the date of the application is not more than Rs. 15,000 the Court shall proceed to take accounts in the manner hereinafter provided.

#### COMMENTARY

*Scope of the section* :—This section corresponds to S. 38 of the repealed Act, which has been commented upon at pp. 180-81 of the Commentary on that Act, subject to the following changes, namely:—

(1) the words and figure "sub-section (1)" and "sub-section (2)" have been omitted; (2) the words "claimed as being" which existed between the words "debts" and "due" have been dropped and the words and figure "1st January 1939" which occurred in that clause have been substituted by the words "the date of the application"; (3) the concluding part of the sentence constituting the main provision is completed by putting a full-point after the word "provided" and the remaining part of the sentence is omitted and (4) the whole of the proviso has been omitted. These changes are in addition to the substitution of the word "Court" for the word "Board" and the figure "4" for the figure "17".

Out of these changes no. 1 is rendered necessary by a provision having been made in S. 4 (1) of this Act for enabling both a debtor and a creditor to apply within the same period. The changes made in clause (b) are the same as those made in S. 11 of the Act for whose explanation see the Commentary on that section. The omission of the words following the word "provided" is due to their being unnecessary after the substitution of the words "the date of the application" for the figures and words "1st January 1939". The change in the date has been commented upon under S. 11 where too the same kind of change has been made. That accounts for the omission of the proviso also. Therefore the only material change is the change in the date. Its effect has been assessed in the Commentary on S. 11. For the rest the Commentary on the old S. 38 may be referred to, which I do not think would be necessary because the language of this section is clear and it only supplies what has been left unsaid in S. 17 (2) or in any other sub-section of that section.

For the interpretation of the word "person" see the comments on S. 2 (14) *Explanation 1 supra*.

21. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Court shall, when taking  
Examination of creditor and debtor. accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded the Court deems it unnecessary so to do.

## COMMENTARY

*Scope of the section* :—Except for the substitution of the word “Court” for the word “Board” in the first part of the sentence and of the words “the Court” for the words “by it in writing it” occurring after the word “recorded” in the concluding part thereof there is no difference between this section and the corresponding S. 39 of the old Act commented upon at p. 181 of the Commentary on that Act. The said changes do not affect the scope of the section.

*Marginal note to this section* :—The Legislature seems to have anticipated the criticism of the wording of the marginal note to this section made at the end of the said p. 181, and made the essential correction therein.

Those interested in the *Analogous law* as contained in the first part of paragraph 1 of S. 12 of the *D. A. R. Act* may further read the note under that heading at pp 182-83.

22. Notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, the Court shall inquire into the history and merits of the case and take account between the parties from the commencement of the transactions subsisting between the parties and the persons (if any) through whom they claim, out of which the claim has arisen and determine the amount due to each of the creditors at the date of the application made under section 4, according to the following rules, namely:—

(1) (a) Separate accounts of principal and interest shall be taken;

(b) In the account of principal there shall be debited to the debtor only such money as may from time to time have been actually recieved by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor;

(c) In the accounts of principal and interest there shall also be debited the amounts, if any, respectively due for principal (including costs) and interest under any decree or order passed by a competent court in respect of any debt;

Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-thirds and one-third of the amount awarded by such decree or order shall, for the purposes of this clause, be deemed to be the amount awarded on account of principal (including costs) and interest, respectively.

(2) In the case of transactions which commenced before the 1st January 1931 the Court shall take the account upto the date of the institution of the application and in the account of interest there shall be debited to the debtor simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 12 per cent. per annum, whichever is the lowest. The amount found due in respect of principal as well as in respect of interest shall, each sepa-

rately, be reduced by 40 per cent, notwithstanding that a decree or order of a civil court was passed in respect of any such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(3) In the case of transactions which commenced on or after the 1st January 1931 but before the 1st January 1940, in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 9 per cent. per annum, whichever is the lowest. The amount found due on the date of the institution of the application in respect of principal as well as interest shall, each separately, be reduced by 30 per cent., notwithstanding that a decree or order of a civil court was passed in respect of such amount or portion thereof. The amounts so reduced shall be taken to represent the amounts due in respect of principal and interest on the date of the institution of the application.

(4) In the case of transactions which commenced on or after the 1st January 1940, in the account of interest there shall be debited to the debtor, simple interest on the balance of principal for the time being outstanding at the rate agreed upon between the parties, or at the rate allowed under any decree passed between the parties, or at a rate not exceeding 6 per cent. per annum, whichever is the lowest.

(5) All money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description recieved by the creditor in the course of the transactions ( estimated, if necessary, at such money-value as the Court in its discretion may determine ) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in rule (2), (3) or (4), as the case may be, the residue of such payment shall be credited to the debtor in the account of principal.

(6) The accounts of principal and interest shall be made up to the date of the institution of the application, and the aggregate of the balance, if any, appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal-account, in which case, double the latter balance shall be deemed to be the amount then due.

Provided that where transactions between the parties have commenced more than 30 years before the 30th January 1940 any settlement of accounts which has been last arrived at between the parties before the said period of 30 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

## COMMENTARY

*Scope of the section.*—The previous section corresponds to S. 39 of the repealed Act. This section corresponds to S. 42 of that Act. That does not however mean that the provisions of SS. 40-41 have been abrogated altogether. Thereout those of S. 41 merely laid down a rule of evidence commonly acted upon in the civil courts and so when the jurisdiction under the Act is transferred to such courts designated as “the Court”, the Legislature seems to have felt that it was not necessary to re-enact that section in any form. As for S. 40 of the old Act it directed an inquiry into the history and merits of each case to be inquired into before making up accounts as directed in S. 42 thereof. The principles underlying both of them have been consolidated and incorporated in this section. Its structure is not however the same as that of S. 42 of the old Act. The latter had been sub-divided into 2 sub-sections, the first of which contained the general direction as to the mode of making up accounts on setting aside all previous agreements, statements or settlements or new contracts and the second prescribed the rules as to how and upto which dates the accounts of principal and interest were to be made, to what cuts they were to be subjected, how payments were to be ascertained and given credit for, how further interest was to be allowed in each class of cases and how finally the amount of principal and interest together was to be determined. That sub-section was accordingly sub-divided into sub-clauses (a) to (g) and sub-clause (e) thereto had been further sub-divided into parts (i) to (iv). This section has no sub-sections at all. Instead it contains a main provision as to the general mode of making up an account and also one for making an inquiry into the history and merits of a case before acting upto that provision which had been contained in the principal clause of S. 40 of the old Act. That section moreover contained a proviso to the effect that if in any case certain conditions were fulfilled, no inquiry should be made beyond the particular backward limit of 20 years laid down therein. That proviso has not been incorporated in the said main provision in this section but has been placed at the end of the 6 rules prescribed by the section.

It is not however an exact reproduction of the proviso to the old S. 40 but contains a variation as to the particular backward limit beyond which the inquiry directed by the main provision should not be pursued in the cases in which the conditions laid down therein are fulfilled. That limit in this proviso is 30 years prior to the 30th January 1940. The rules prescribed by this section are the same as to the making up of separate accounts of principal and interest and the application of the rule of Damdupat after making up accounts upto the date of the application but there are important variations as to the classes of cases to which and the stages at which the 40% and 30% cuts are to be made and consequently as to the rates at which interest is to be allowed in particular classes of cases. These variations are that the transactions are divided instead of 2 into 3 classes, namely:—

- (1) Those which commenced at any time before 1st January 1931,
- (2) those which commenced on or after 1st January 1931 but before 1st January 1940 and (3) those which commenced on or after 1st January 1940. All these are treated on the same level as to making up separate accounts of principal and interest upto the dates of the respective applications and the rate at which interest is to be debited in case a rate is agreed upon or the creditor concerned has obtained a decree and that decree provides for allowing interest at a specified rate. In the latter respect however the result in each case is likely to be different because the contract rate or the decretal rate is subject to a proviso to the effect that any of the two rates is to be acted upon only if that rate is lower than 12% p. a. in the case of the transaction of the first class, lower than 9% p. a. in those of the second class and lower than 6% p. a. in those of the third class. Then again after accounts are thus made up it is only the transactions of the first two classes that are to be subjected to statutory cuts, not those of the third and as regards the first two also, the cut to be made is that of 40% in the case of the first class of transactions and that of 30% in that of the second class of transactions.

Thus there are only two substantial changes in this section denoting a departure in the policy of the Legislature and they are:—

- (1) that extending the backward time-limit for dispensing with inquiry into the history and merits of a case from “20 years before the



coming into force of this Act" *i. e.* 20 years before the Act of 1939 came into force in each particular selected area to 30 years before 30th January 1940 in every case uniformly and (2) that dividing the transactions into three classes, directing accounts of all of them to be made up to the particular date of the application in every case uniformly, prescribing different minimum rates of interest for the three classes to be applied from the very beginning and exempting the transactions entered into on or after 1st January 1940 from the operation of any cut whatever.

One can easily see that these are concessions in favour of the creditors who were clamouring against the provision as to the application of the arbitrary cut.

It must be subject to the above observations as to the proviso that the comments on S. 40 of the old Act at pp. 183 and 184 of the Commentary on that Act must be read. Those interested in the previous history of such a restrictive enactment are advised to read the comments on the *Analogous law* below that Commentary at pp. 184-85.

For the meaning of the word "persons" occurring in the introductory paragraph of this section see the comments on S. 2 (14) *Explanation 1 supra*.

Similarly it must be subject to the observations as to the changes in the rules that the comments on S. 42 of the old Act at pp. 193-202 of the Commentary on that Act must be made use of. The *Analogous law* so far as the provisions of that section are concerned, will also be found discussed at pp. 202-03 of that Commentary. While making use of the observations made therein it should be borne in mind that the provisions of the old S. 40 have been incorporated in the main provision in this section, that the proviso thereto has been re-enacted here but with the above important variation and that there is no express provision in this Act corresponding to that contained in S. 41 of the old Act, though the general rule of the law of evidence that if a claim is admitted by a party against whom it is made and if such admission is found to have been made by that party with knowledge of its consequence on himself, no investigation thereof is

necessary, can be acted upon. Moreover this rule of evidence can be deemed to have been indirectly approved by this Act because the next step provided for in S. 21 is to be taken only "if the creditor's claim is disputed" and if the Court decides to take it. In a case in which it decides otherwise, *i. e. to say*, decides to dispense with their examination, it should record its reasons for such a decision.

SS. 4, 6, 11, 17, 18, 19, 20, 21 and 22 :—In view of the changes above-noted, it would be well to sum up here the steps in the procedure to be followed by the Court after a decision has been arrived at as to the two points which are directed by S. 17 (1) to be decided as preliminary issues.

If the finding on the question of status of the person concerned is in the negative or on that as to the total amount of his liabilities upto the date of the application under S. 4 is in the affirmative, the Court should act under S. 17 (2) and in either case dismiss the application after ascertaining in the latter that neither all nor any of the creditors is willing to remit a portion of their or his claim to the extent necessary to bring the case within the maximum limit imposed by S. 11. If in any case the applicant happens to be a creditor, the Court should, while dismissing his application order under S. 18 the refund of the court-fee paid by him. This direction must be deemed to be applicable whether the application is a simple one made under S. 4, or one against a debtor who is jointly and severally liable with another debtor or along with a surety made under S. 6. Such an order is not however to be made on the plaint in a suit, a memorandum in an appeal, an application for execution or a miscellaneous application in a proceeding other than revisional transferred to the Court under S. 19 (1) or (2) and directed to be treated as an application made under S. 4, for in that case the suit etc. are to be retransferred to the original Court under S. 19 (4).

If on the other hand both the conditions laid down in S. 11 or S. 17 (1) are found to have been fulfilled the application becomes fit to be proceeded with under S. 20 onwards. The next step in the case of such an application, if the creditor's claim is disputed, is to

examine under S. 21 the debtor and creditor as witnesses, unless for reasons to be recorded the Court deems it unnecessary to do so. It is only thereafter that an occasion for acting under the provision of S. 22 arises.

In proceeding under that section the first thing to do is to inquire into the history and merits of each case from the commencement of transactions, not falling within the purview of the proviso at the end of the section. In their case such inquiry is to be made only from the date of the settlement onwards.

That done the next step is to prepare separate accounts of the principal and interest as directed in the three clauses of rule (1), and apply the proviso thereto if the case falls under it.

The third step then is first to ascertain whether the case falls under rule (2), or rule (3), or rule (4). If it falls under either rule (2) or rule (3) the amounts of principal and interest are to be made up to the date of the application concerned under the rule which is applicable and then each amount is to be subjected to a cut of 40% or 30% according as the case falls under rule (2) or rule (3). In a case not falling under any of those rules, accounts are to be simply made up as directed in rule (4). The rate at which interest is to be debited in each case must primarily be determined in view of the facts whether there was any mutual agreement between the parties or whether there is a decree in the case containing a provision for charging interest, and whether the rate agreed upon or provided for is higher or lower than that mentioned in the particular rule under which the case falls. If it is lower, interest should be debited at that rate and if higher, it should be debited at the rate specified in the rule.

The fourth and the last step is to see in each case whether the amount of the interest due at the date of the application does or does not exceed that of the principal due on that date. If it does not, nothing is to be done and the amounts are to be declared to be due on the said date. If it does, the amount double that of the principal

found due, is to be declared to be due to the creditor. That declaration completes the operation of S. 22 of this Act.

23. Where any mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor and the Court is unable to determine what profits have actually been received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 22 :

In certain cases rent may be charged in lieu of profits.

Provided that, if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the *Bombay Land Revenue Code, 1879*, an abatement of the whole or part of such amount may be allowed for the year. Bom. V of 1879.

### COMMENTARY

*Scope of the section* :—This section is in the same terms as S. 44 of the repealed Act except for the substitution of the word “Court” for the word “Board” and the figure “22” for the figure “42” in the main provision. The proviso remains unamended as a whole. The changes in the main provision also are of such a consequential nature as are made throughout the Act and do not affect the nature or extent of the provision.

The said section of the old Act has been explained at p. 206 of the Commentary on that Act. So far as the main provision is concerned it must owing to the above changes be read subject to a similar substitution in both the cases and the further substitution of the words “rule 5” for the letter (f) of the relevant clause in sub-section (2)

of S. 42 of the old Act to which S. 22 of the present Act corresponds. The note on the proviso can be read without any alteration.

24. (1) Notwithstanding anything to the contrary contained in any law, custom or contract, whenever it is alleged during the course of the hearing of an application made under section 4 that any transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage, the Court shall declare the transfer to be a mortgage, if the Court is satisfied that the circumstances connected with that transfer showed it to be in the nature of a mortgage.

Power of Court to declare transfer purporting to be sale to be in nature of mortgage.

(2) Any agricultural labourer may make an application before the 1st August 1947 to the Court that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. On hearing the application the Court shall, notwithstanding anything to the contrary contained in any law, custom or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. When the Court' makes any such declaration, the applicant shall, notwithstanding anything contained in the definition of "debtor" in subsection (5) of section 2, be deemed to be a debtor for the purposes of this Act and the Court shall proceed as if an application under section 4 had been made to it,

## 25. Nothing in section 24 shall apply to—

- Provisions of section 24 not to apply to certain transfers and transferees.
- (i) any transfer which has been adjudged to be a transfer other than a mortgage by a decree of a court of competent jurisdiction or by a Board established under section 4 of the repealed Act; and
- (ii) any *bona fide* transferee for value without notice of the real nature of such transfer or his representative where such transferee or representative holds under a registered deed executed on or before the 15th day of February 1939.

### COMMENTARY

*Scope of the sections* :—S. 24 (1) of this Act corresponds to S. 45 (1) of the repealed Act with a substantial variation in its wording which affects its scope. S. 24 (2) is entirely new. S. 25 contains a re-enactment of the provisions of S. 45 (2) of the old Act to the exclusion of clause (i) therein with the result that clause (ii) therein has been made clause (i) in S. 25 of this Act and clause (iii) has been made clause (ii) in the said section of this Act, both after substantial changes in their phraseology. The changes above referred to are as under :—

*Sub-section (1) of S. 24* :—In the opening part of this sub-section, the words “to the contrary” has been inserted between the words “anything” and “contained”; (2) the words “transaction purporting to be a sale of land belonging to a debtor was a transaction in the nature of a mortgage” have been substituted by the words “transfer of land by a person whose debts are being adjusted under this Act or any other person through whom he inherited it was a transfer in the nature of a mortgage”; (3) the words “declare the transaction to be so” have been substituted by the words “declare the transfer to be a mortgage” and the word “sale-deed” has been re-placed by the

word "transfer". These changes are in addition to the substitution of the figure "4" for the figure "17", and of the word "Court" occurring at two places for the word "Board".

Out of these changes the only one which affects the scope of the sub-section is no. 2, for no. 1 only clears up the intention of the Legislature as to what it meant by the words "Notwithstanding anything" and no. 3 is consequential upon the second. As to the latter the Legislature has extended the provision contained in this sub-section to all cases of transfers by way of mortgage whether an ostensible sale-deed or any other kind of deed had or had not been passed in connection therewith. A transfer in the revenue records got made on giving a *kabuliyat* can after this change be declared to be in the nature of a mortgage whatever the words used while giving the *kabuliyat* may be. Note that S. 2 (5)(a) (ii) and (b) (ii) are now so worded as to enable an individual or an undivided Hindu family who or which had made such a transfer and handed over possession of the holding to which it related to the transferee at any time falling within the 30 years preceding the 30th January 1940, to be held to be a debtor within the meaning of this sub-section, provided the other conditions laid down in it are fulfilled.

For the meaning of the word "person" which has not been defined herein see the comments on S. 2 (14) *Explanation 1 supra*.

*Sub-section (2) of S. 24* :—This is an entirely new provision in this Act providing for a new remedy which is intended to be of use to an agricultural labourer between the date of coming into force of this Act and 31st July 1947 who or the person through whom he may have inherited a land may have made a transfer of that land to another in the nature of a mortgage at any time whatever. The wording of the first sentence seems to be elliptical. The more appropriate one would have been "may make an application × × × to the Court for a declaration that any transfer etc.", for, an application containing a mere statement of fact or an allegation and no prayer for any relief is not an application at all but a mere intimation which

does not require any hearing as seems from the sentence to have been intended to be made.

There is a further ellipsis also in this provision, for, the Court cannot at once proceed to hear the application but must, on the receipt of such an application, issue a notice to the alleged transferee to show cause why the declaration prayed for by the applicant should not be made. Though it is not so expressly provided it is implied by the direction to hear the application. An *ex parte* hearing thereof would not be justified according to the principles of justice, equity and good conscience, which in the absence of an express provision, must be held to govern a case in which the right of ownership to an immovable property is involved. If the transferee appears and denies the alleged nature of the transfer then the parties should be examined, and such evidence, oral or documentary, which may be direct or circumstantial, as the parties lead is to be recorded. It is at that stage only that the Court would have sufficient materials for arriving at a decision whether the applicant's allegation is correct or incorrect. If it comes to the conclusion that it is correct, which is what is meant by the conditional clause "if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage", then alone it should make the required declaration, "notwithstanding anything to the contrary, contained in any law, custom or contract". If and after the Court makes such a declaration it is directed to treat the applicant as a "debtor" for the purposes of this Act, "notwithstanding anything contained in the definition of "debtor" in sub-section (5) of section (2)" and proceed to adjust his debt as if an application under S. 4 had been made to it. This is thus the second instance in which the Court is to follow the procedure for the adjustment of debts although no formal application may have been made to it under S. 4 (1) of this Act, the first one being that provided for in S. 19 (3) of this Act.

The term "agricultural labourer" has not been defined in this Act though the term "agriculture" is. [See *Explanation* to S. 2 (5)].

NOTE that pleaders can, as of right, appear on behalf of a party before the Court or the Court in appeal when proceedings under this



section are being conducted. A party successful in such proceedings cannot however be allowed the costs of engaging a pleader. (See proviso 2 to S. 42 *infra*).

*Appeals against the orders made under this section :—*  
According to S. 43 (1) (*iii*) every order made under S. 24 is appealable.

*Introductory part of S. 25 :—*The introductory part of the sentence constituting S. 25 is the same as that of S. 45 (2) of the repealed Act with this formal difference that in place of the words "this section" there are the word and figure "section 24" after the words "Nothing in".

*Clause (i) in S. 25 :—*This clause corresponds to clause (*ii*) in S. 45 (2) of the repealed Act but there are important changes in its wording. They are :—(1) in place of the word "transaction" after the word "any" there is the word "transfer"; (2) in place of the words "a sale" there are the words "a transfer other than a mortgage" and between the word "jurisdiction" and a semi-colon the following additional words have been inserted, namely :—"or by a Board established under section 4 of the repealed Act."

The first two changes were absolutely necessary in view of the substitution of the word "transfer" for the word "transaction" in S. 24 in which this section introduces two exceptions. The third seems to have been intended to make the decisions of the D. A. Boards made under S. 45 of the old Act holding certain transfers to be transfers other than in the nature of mortgages binding on the Courts in whom the jurisdiction under this Act has been vested.

NOTE that this clause contains an express reference to a portion of the repealed Act. This is the fourth instance of that kind, the first three being those in S. 2 (6), S. 3 (*iv*) and S. 4 (1).

*Clause (ii) in S. 25 :—*This clause corresponds to clause (*iii*) in S. 45 (2) but it has been wholly revised and introduces several changes in the nature of the exception to be recognised under it. Those changes are :—(1) by the clause of the old Act it was "any property belonging to a debtor and purchased by a third person from

the transferee of a debtor" that was exempted from the operation S. 45 (1). Here on the other hand it is a "*bona fide* transferee for value without notice of the real nature of such transfer or his representative, where such transferee or representative holds under a registered deed executed etc." The date on or before which the transfer must have taken place under the present clause is the same as the date in the case of the purchase referred to in corresponding clause in S. 45 (2) of the old Act. Thus the conditions essential under the old provisions were :—(1) the property must be belonging to a debtor ; (2) it must have been purchased on or before 15th February 1939 by a third person from the transferee of a debtor, *i. e. to say*, a transfer from a debtor to another person must primarily have taken place and secondarily, that transferee must have sold the property to the holder at the time of the application and both these transactions must have taken place on or before 15th February 1939. Those essential under the present provisions are :—(1) the holder at the date of the application must be a transferee for value without notice of the transfer being of the nature of a mortgage or his representative in interest, *i.e. to say*, a person deriving title through him under a deed of sale or gift *inter vivos* or an assignment of his right, title and interest, holding under a registered deed executed in his favour on or before the 15th day of February 1939.

These changes apparently restrict the scope of the exception to a fewer cases than could fall under the exception created by cl. (iii) of S. 45 (2) of the old Act.

*Clause (i) in S. 45 (2) of the old Act and S. 24(2) of this Act:—* This clause which exempted from the operation of S. 45 (1) of the old Act any transaction entered into before 1st January 1927 and thus made unassailable under the said section titles acquired before the said date in any manner whatever, has not been re-enacted in any portion of S. 25 of the present Act. On the contrary a wide flood-gate for such attacks has been opened out by the introduction of the new provision in S. 24 (2) of this Act enabling even a non-debtor under the Act for other purposes who is an agricultural labourer to file till 31st July 1947 an application for a declaration regarding land trans-

ferred at any time whatever by him or by his immediate or even any distant predecessor-in-title unless that transfer falls within the purview of any of the two exceptions introduced by S. 25 of this Act.

*Appeals or revision applications against orders made under this section* :—S. 25 of this Act is not one of those the orders passed under which are declared to be appealable. However the nature of both the clauses in that section is such that any orders passed with reference to the provisions of any of them would also be one under S. 24. It therefore appears that orders passed pursuant to any of those provisions would be construable as orders as well under S. 24 (1) or (2) as under S. 25 (i) or (ii). If this view is not correct, an application for revision would necessarily lie to the High Court under S. 115 of the C. P. Code read with S. 46 of this Act.

26. (1) On receipt of an application for adjustment of debts, the Court shall give notice to the Collector requiring him to state to the Court within such time as may be fixed by it the amount of the debt due by the debtor to Government.

Notice to Collector,  
co-operative societies,  
Registrar, local  
authorities and  
others.

(2) The Court shall also give similar notice to any local authority, co-operative society or scheduled bank to which any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent court. In case of any debt due to a co-operative society, the Court shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(3) On receipt of such notice the Collector, the local authority, the co-operative society or the scheduled bank, or the person entitled to maintenance, as the case may be, shall, within such time as may be fixed by the

Court, from time to time, submit a statement to the Court showing the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of the liability for maintenance under the decree or order.

(4) The Collector, the co-operative society and the scheduled bank shall also furnish a statement to the Court showing the amount of remission which the Provincial Government, the co-operative society or the scheduled bank, as the case may be, is willing to give in respect of the debt.

(5) The portion of any debt remitted under sub-section (4), and unless the Court otherwise directs, any debt or portion thereof in respect of which no statement is submitted under sub-section (3), shall be extinguished.

### COMMENTARY

*Scope of the section* :—This section is the same as S. 47 of the old Act, which has been commented upon at pp. 219-22 of the Commentary on the old Act, with certain variations as noted below:—

*Sub-section (1)* :—Sub-section (1) of the present section like the corresponding one of the old section contains a direction to give notice to the Collector to intimate to the Court the total amount of debts, if any, due by the debtor to Government. The only changes introduced by the present sub-section are:—(1) the authority to issue such a notice is vested in the Court instead of in the Board as under the old sub-section and (2) the time within which the Court is to call upon the Collector to file the required statement of the Government dues is to be fixed by the Court itself in the exercise of its discretion vested in it by this sub-section instead of being left to be prescribed by the Provincial Government in the exercise of its rule-making power.

*Sub-section (2) :—*This sub-section again like sub-section (2) of the old Act contains a direction to give a similar notice to the local authority, co-operative society, or scheduled bank to which the debtor may be indebted and also to a person, if any, who may have obtained a decree or order for maintenance against the debtor from a competent court. The use of the adjective “similar” before the noun “notice” indicates that in the case of the statements to be filed by any of those above-mentioned, as in that to be filed by the Collector, it is the Court that is to fix the time for filing them. The only changes that appear to have been made in the wording of this sub-section are:—(1) the substitution of the word “Court” for the word “Board” and (2) the omission of the indefinite article “a” which existed in the old sub-section before the words “similar notice”, and of the words “or to whom” which followed the words “to which” and preceded the words “any debt”. The first is only a consequential change which makes no change in the nature of the provision contained in the sub-section. The omission of the article and the words too, while adding to the elegance of style and diction does not affect the sense conveyed by the original sentence.

For the significance of the word “person” occurring in this sub-section see the comments on S. 2 (14) *Explanation 1 supra*.

*Sub-section (3) :—*This sub-section enacts the old sub-section (3) after making two kinds of changes, namely:—(1) It *omits* the words “for the purpose of enabling the Board to determine the paying capacity of the debtor under section 51” which existed after the word “shall” and (2) (a) in place of the words “within the time prescribed” it *substitutes* the words “within such time as may be fixed by the Court from time to time; (b) in place of the words “intimate to the Board” it substitutes the words “submit to the Court”; and (c) in place of the words “in respect of such debt” it substitutes the words “the liability for maintenance under the decree or order”.

These are important changes. The first change is such that the persons served with the notice under sub-sections (1) and (2) have

nothing to do with the purpose to which the statements to be filed may be put by the Court once they are in its possession. The change no. 2 (a) not only vests in the Court the discretion to fix once for all the time within which the statements should be filed but also to extend the time once fixed as often as it deems it necessary to do so. Mark that no such power of granting extensions of time is mentioned in or implied by the wording of sub-section (1). That in no. 2 (b) implies that the Legislature intended that the persons served with notice should look to the Court with respect and abide by its orders. Lastly, that in no. 2 (c) makes it clear that the submission as to the amount of recurring liability is to be made only by the holder of a maintenance decree or order.

*Sub-section (4) :—*This sub-section is the same as sub-section (4) of S. 47 of the old Act with this variation that for the words “intimate to the Board” the words “also furnish a statement to the Court showing” have been substituted. This is a change in keeping with that bearing no. 2 (b) under sub-section (3) and implies that what the persons have to do is not only to inform the Court of the amount of remission decided to be given but also to furnish a detailed statement showing the original amount due, that decided to be remitted thereout and the balance of the debt remaining to be recovered after that is done.

*Sub-section (5) :—*This sub-section has been wholly re-cast and contains two important changes, namely :—(1) Under the old sub-section (5) it was merely declared that it shall not be lawful to retract a remission once communicated to the Board. That however put it out of the power of the person concerned to recover the remitted portion otherwise than under this Act. The present sub-section declares the portion of the debt so shown as remitted to have been extinguished; (2) It also provides for the extinction as a matter of course of a debt or its portion in respect of which no statement is submitted as required by sub-section (3), unless the Court directs that it shall not be deemed to have been extinguished. The latter is quite a new penal provision making it impossible for any of the persons served with a notice under sub-section (1) or sub-section (2) to ignore the same.

*Marginal note to this section:—*The marginal note to this section has been made comprehensive enough by the addition of the words “and others” at its end. And yet it has reference to the first two sub-sections only.

27. After taking accounts under section 22 the Court shall in the manner hereinafter provided determine—

Court's duty to determine particulars, value etc., of property.

(1) the particulars of the property belonging to the debtor,

(2) the value of the said property,

(3) the particulars of any incumbrances on the said property, and

(4) the paying capacity of the debtor.

#### COMMENTARY

*Scope of the section:—*This section contains only a general direction to take particular steps towards the further progress to be made in the proceeding relating to an adjustment of the debts of the debtor after their amounts are determined according to the provisions of S. 22. It corresponds to S. 48 of the repealed Act and the only change in its wording is to be found in the substitution of the words “After taking accounts under section 22 the Court” for the words “The Board”. The words “The Court” would have been required to be substituted in any case. Here however the words preceding them have been added for the first time in order to make it clear that this section is connected with the previous group of SS. 20 to 23 of which the principal one is 22, which provides for the mode of taking accounts. This change makes no difference in the nature of the provisions. For their explanation reference may be made to pp. 222-23 of the Commentary on the old Act, on which the corresponding section therein has been commented upon, bearing in mind that the sections of this Act corresponding to SS. 50, 49 and 51 of the old Act mentioned in the 2nd paragraph there are SS. 29, 28 and 30 respectively.

28. (1) If in the course of the hearing of an application made under section 4, the Court finds that the debtor has made an alienation of property or created any incumbrance thereon with intent to defeat or delay any of his creditors, the Court shall, by notice, summon the debtor and the person in whose favour the alienation or incumbrance is made or created to appear before it on a day to be specified in the notice.

Fraudulent  
alienations or in-  
cumbrances void.

(2) On the day specified in the notice or such other day to which the hearing may be adjourned the Court shall hear the parties and if it is satisfied that the alienation was made or the incumbrance was created with intent to defeat or delay any of the creditors of the debtor, the Court shall declare the alienation or incumbrance to be void.

(3) Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for valuable consideration.

#### COMMENTARY

*Scope of the section* :—The corresponding S. 49 of the old Act had not been sub-divided into sub-sections like the present one. But it contained two paragraphs the first of which contained a substantial provision on the subject mentioned in the marginal note and the second one exempted from the operation of the first *bona fide* transactions for value without notice. It is this second paragraph only which has been re-enacted with the addition of the adjective “valuable” before the noun “consideration” as sub-section (3) of this section. The first two sub-sections have this in common with the first paragraph of S. 49 of the old Act that they cast a duty upon the Court to investigate the charge of a fraud having been committed by the debtor in collusion with any other creditor with a view to defeat or delay any one of or all the



other creditors of his, and if the charge is found to have been made rightly then to make a declaration as to the voidness of the alienation or encumbrance which had been challenged. That paragraph did not, on the one hand, contain any provision as to the steps to be taken in the course of that investigation and on the other, contained a general declaration that such an alienation or incumbrance shall be void for the purposes of this Act. The first two sub-sections on the other hand, lay down the exact procedure to be followed by the Court in the course of an investigation to be made under this section and does not contain a general declaration of law of the above nature.

*Sub-section (1) :—*According to this sub-section the Court is required to summon the parties concerned by serving them with notices “If in the course of the hearing of an application made under section 4 the Court *finds* etc.” The word “finds” used in this part of the sentence means here simply “discovers” not “comes to a conclusion”, for, before an investigation is commenced the Court cannot have sufficient data to come to a definite conclusion. It has the sense of “has reason to believe that etc”. I believe that is what the Legislature must have meant by saying “the Court finds etc.” The step to be taken by it under this sub-section is to issue show-cause notices in the manner provided for by S. 45 *infra*. The date of hearing must be specified in such notices.

*Sub-section (2) :—*Under this sub-section the Court is required to *hear*, not merely to *examine*, the parties and if it is satisfied as to the correctness of the belief above-mentioned, then to declare the alienation or incumbrance to be void. When the Legislature says that the Court shall *hear the parties*, it intends, in my view, that if any of them offers to adduce any oral or documentary evidence besides his personal deposition, the Court would not be justified in refusing to take it. Such evidence would presumably be absolutely necessary in a case in which one of the parties to the transaction may have died before the commencement of the investigation and his heir or successor-in-title has no personal knowledge of it.

NOTE that the initial words of the sentence constituting this sub-section, namely “On the day specified in the notice or such other

day to which the hearing may be adjourned", imply that the Court need not necessarily make the hearing on the day specified in the notice but may adjourn it for a sufficient reason as many times as may be found necessary from the circumstances of the case or the general state of work in the Court.

NOTE *secondly* that neither this sub-section nor the subsequent one mentions what the Court is expected to do if it finds as a fact that the suspicion proceeding on which it issued notices was not well-founded. However in that case the duty of the Court would obviously be to quash the proceeding.

NOTE *thirdly* that under the saving-clause in S. 42, pleaders can appear, as of right, on behalf of a party to the proceeding, so long as it continues but that the successful party thereout cannot get his costs of engaging a pleader taxed in the bill of costs therein.

*Appeals against orders made under this section* :—Every order passed under this section is appealable according to clause (iv) in sub-section (1) of S. 43 and that under the saving-clause in S. 42 read with the general prohibition contained therein and proviso 2 thereto a pleader can be engaged at his own costs by a party to an appeal filed against an order made by the Court under this section.

*Sub-section 3* :—As said above this is word to word the same as paragraph 2 of S. 49 of old Act except for the addition of the adjective "valuable" qualifying the noun "consideration". The explanation thereof contained in the latter part of the Commentary on that section at pp. 223-24 of the Commentary on that Act therefore deserves to be modified. Though it is only one word that has been newly added, it makes a substantial change in the law on the subject. The legal effect thereof is that now no consideration which is not "valuable" would save an alienation or incumbrance from being declared void under sub-section (2) even if the transaction had been entered into in good faith.

NOTE the important difference between the wording of this sub-section and that of clause (ii) in S. 25. Want of notice is an important element in the latter, not in the former.

29. (1) Subject to the provisions of sub-sections (2), (3) and (4), the value of the property and other assets of a debtor for the purposes of ascertaining the paying capacity of the debtor under section 27 shall be determined by the Court in the prescribed manner.

(2) The property or assets which are exempt from attachment in execution of a decree of a civil court under the *Code of Civil Procedure, 1908*, shall not be taken into account.

V of 1908

(3) The amount of the debts mentioned in section 3 shall be deducted.

(4) The market value of the lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government, shall be calculated in such manner as may be prescribed.

### COMMENTARY

*Scope of the section* :—This section corresponds to S. 50 of the old Act with certain changes as noted below.

In the first place the whole structure has been changed in this way that whereas in the old section there were no sub-sections, but only one entire section containing a general provision and 5 rules to be observed as to specific kinds of property forming part thereof, this section has been sub-divided into 4 sub-sections, the first of which lays down a general provision and the next three particular provisions as to particular classes of property. Section 50 of the Act of 1939 had been so amended by S. 21 of that of 1945 as to substitute only one paragraph, numbered (2), for the original two paragraphs, numbered (2) and (3), and the original nos. of the next two, namely (4) and (5)

had been kept unaltered. So that for the purpose of comparison here, there are besides the general provision paragraphs (1), (2), (4) and (5) of S. 50 of the Act of 1939.

*Sub-section (1):*—The changes that can be noted in the case of this sub-section are:—(1) The initial words “ Subject to the provisions of sub-sections (2), (3) and (4) ” are newly added in the general provision in S. 50 of the old Act; (2) For the figure ‘51’ after the word “ section ” therein the figure “27” has been substituted. It is worthy of note in this connection that the section in the present Act which corresponds to section “51” of the old Act is not “27” but “30”. The reference to section “51” in the old Act was wrong. In my comments on this section at p. 227 of the Commentary on that Act I had already corrected this mistake for the knowledge of the reader by mentioning “S. 48” in connection with the determination of the paying capacity of the debtor. The Legislature has here corrected it for the world at large; (3) The word “ Board ” has been substituted by word “ Court ” which being a change in the usual course needs no comment; (4) The words “ in the prescribed manner ” at the end have been substituted for the words “ as follows ”. This change has enabled the Provincial Government to lay down rules for all kinds of property and assets generally, the power to do which had been conferred by paragraph (5) of the old section.

*Sub-section (2):*—This sub-section is word to word the same as the corresponding paragraph except for the omission of the initial words “ In determining the value of the property or assets of a debtor ” which were superfluous. The provision contained herein has been explained at p. 227 of the commentary on the old Act.

*Sub-section (3):*—This again is the same as paragraph (2) in the old section with the like omission. This will be found commented upon by reference to the changes introduced in 1945, at p. 227 of the said Commentary.

*Sub-section (4):*—This sub-section stands in the place of paragraphs (4) and (5) in the old section which have been commented upon at pp. 228-29 of the said Commentary and are found here to have

been consolidated and amended. Paragraph (4) permitted the Board to treat as the debtor's absolute property for this purpose any land held by him subject to the provisions of S. 73 A of the *Bom. L. R. Code, 1879*, and had a proviso stating that the said provision did not extend to the lifting of the ban on the transfer of such a land. Paragraph (5) empowered the Provincial Government to prescribe by rules the manner of determining generally the market value of the debtor's property and assets. This sub-section which replaces both the said paragraphs leaves to be prescribed, presumably by rules to be made under S. 55, the manner of calculating the market value of only those lands which under any law for the time being in force are not transferable or alienable except with the previous sanction of either the Collector or the Provincial Government. This sub-section read with sub-section (1) amended as stated in the 4th change thereunder enables the Provincial Government to prescribe under sub-section (1), general rules applicable to all the property and assets of a debtor for determining their market value and under this sub-section specific ones as to all the lands which are not transferable or alienable except with the previous sanction of either the Collector or the Provincial Government under the provisions contained in every relevant enactment, not simply S. 73 A of the *Bombay Land Revenue Code, 1879*, for the expression "prescribed manner" in sub-section (1) and "in such manner as may be prescribed" in sub-section (4) both mean, according to S. 2 (8), the manner "prescribed by rules" and the restrictive clause "Subject to the provisions of sub-sections (2), (3) and (4)" at the commencement of sub-section (1)" will require the Government to frame such general rules only under the latter as may be consistent with the specific ones to be made under the former.

30. The paying capacity of the debtor shall, for the purposes of this Act, be deemed to  
Paying capacity. be sixty per cent. of the value of all the property of the debtor :

Provided that when any portion of such property yields income but the market value of such portion

cannot be determined, the value of such portion shall be the amount of the income capitalized at six per cent. per annum.

### COMMENTARY

*Scope of the section*:—The section of the old Act to which this section corresponds is S. 51. The method of ascertaining the paying capacity of a debtor is however much simplified as contained in the main provision which has now no sub-clauses prescribing different methods for encumbered and unencumbered properties and the other assets but only one general rule to hold the paying capacity of a debtor to be that represented by 60% of the value of all of them. This change does not however, in my view, mean that the Court would be justified in ignoring the above distinctions even while assessing the value. It only means that it has not to mind them while determining the debtor's paying capacity. For their observance at the former stage provision will have to be and is most probably intended to be made in the rules to be made under S. 29 (1) and that is enough, for, once the value has been determined on excluding the amount required for discharging an encumbrance on a property, that amount need not be kept in mind while determining the paying capacity.

The Commentary on S. 51 at pp. 229-31 should be read subject to the above change.

The proviso to the main provision is in exactly the same words as in the old section except for the substitution of the letter 'z' for the letter 's' in the spelling of the word "capitalized", which makes no difference in the meaning of the word.

**31. (1)** Notwithstanding any law, custom, contract, award or decree of a court to the contrary the amounts found due under section 22 from a debtor shall be further scaled down in the manner hereinafter provided.

Debts payable by debtors to be scaled down.

(2) If all the debts found due by a debtor after taking accounts under section 22, are unsecured, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(3) If all the debts found due by a debtor after taking accounts under section 22, are secured debts, and the total amount of such debts is more than sixty per cent. of the value of the property belonging to the debtor, such debts shall be further scaled down *pro rata* to the paying capacity of the debtor.

(4) If the debts found due by a debtor, after taking accounts under section 22, are both secured and unsecured, and if the total amount of the secured debts is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the property on which such debts are secured and the unsecured debts shall be further scaled down *pro rata* to sixty per cent. of the value of the other property belonging to the debtor over which no debts are secured.

#### COMMENTARY

*Scope of the section* :—This section corresponds to S. 52 of the old Act with certain changes as noted below. Like its predecessor it has been sub-divided into 4 sub-sections, of which the first lays down the general principle of the scaling of debts and the remaining three lay down those on which that is to be done in the case of those falling under the one or the other of them.

*Sub-section (1)* :—The general principle contained in sub-section (1) has been modified here in two respects, namely:—(1) The terms of an award, if any, are to be disregarded while applying this

section. This change is effected by inserting the word "award" between the words "contract" and "or decree of a court"; (2) In place of the words "all debts payable by a debtor at the commencement of this Act", which kept it open to doubt as to the stage at which the principle of scaling down is to be applied and as to whether it is or is not intended to be applied to the debts which are settled and awards are made with respect thereto under SS. 23 and 24 of the old Act, the words "the amounts found due under section 22, from a debtor" which make it definitely clear that the proper stage for the application of the principle of scaling down is that subsequent to the determination of the amount payable by a debtor on acting under the provisions of S. 22 which corresponds to S. 42 of the old Act and that it is intended to be applied to those debts only which are adjusted. This is made still more clear by adding the word "further" before the words "scaling down", which is an appropriate change in view of the fact that the provisions of rules (2) to (4) in S. 22 do embody a principle of scaling down which is more rigorous than that contained in this section. (3) The proviso added to this sub-section in 1945 has been omitted. This is a change consequent upon the second so far as the stage for the application of the principle is concerned which renders any distinction between the dates of establishment of D. A. Boards in specific areas unnecessary.

*Sub-section (2):*—Changes similar to the second in sub-section (1) have been made in this too which relates to a case of unsecured debts exclusively and the words "the value of" which existed before the term "paying capacity" and were quite unnecessary have been dropped.

*Sub-section (3):*—The same kind of changes as to the stage have been made in this sub-section also which relates to a case of secured debts exclusively and the words "the paying capacity of the debtor" have been substituted at the end for the words "sixty per cent. of the value of the property".

*Sub-section (4):*—In this sub-section also, which relates to the application of the principle to a case in which there are both secured



and unsecured debts, the same kind of changes as to the stage at which the principle is to be applied have been made.

Subject to the above modifications the Commentary at pp. 232-36 of Commentary on the old Act holds good and may be read in this connection except the last paragraph on "Changes in the law" which has no more than a historical interest.

NOTE particularly that the Court has a discretion under S. 35 (1) to refuse to act upon the principle embodied in this section in a case of collusion and that it has a similar discretion under the proviso to S. 37 while re-adjusting the debts of a debtor on re-opening an award.

32. (1) After determining the amount of debts scaled down in the manner provided in section  
Award. 31 the Court shall, save as otherwise provided in section 33, make an award.

(2) The award shall be in the prescribed form and shall be drawn up subject to the following provisions:—

(i) the amount of the secured debts scaled down shall be charged on the properties on which they may have been secured;

(ii) subject to clause (i) the amount of unsecured debts shall be charged on all the properties of the debtor;

(iii) in fixing the priority in which debts shall be paid the following order shall be followed:—

(a) debts due to Government, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's land revenue,

(b) debts due to local authorities, which are charged on the immoveable property belonging to the debtor or which are recoverable as the current year's dues,

(c) loans given by resource societies or by persons authorised to advance loans under section 78 of the repealed Act or section 54 of this Act for the financing of crops under the repealed Act or for seasonal finance under this Act after the 30th January 1940 and other loans given for financing crops after the 1st January 1939 and before the 30th January 1940,

(d) secured debts in order of priority,

(e) debts due to Government, local authorities and other bodies including co-operative societies and recoverable as arrears of land revenue,

(f) other debts due to co-operative societies,

(g) unsecured debts :

Provided that in the case of unsecured debts they shall be paid *pro rata*;

(iv) the total annual instalments shall not exceed twelve;

Provided that in fixing the amount of instalments in which the debts shall be paid the Court shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

*Explanation :—* For the purposes of this clause the net annual income of the debtor shall mean the balance of his annual income after deducting (i) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance passed by a competent court, (ii) such sum as may be considered necessary for the maintenance of the debtor and his dependants, and (iii)

the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of the financing of crops under the repealed Act or seasonal finance under this Act;

(v) the Court may pass an order for the delivery of possession of any property notwithstanding any law or contract to the contrary;

(vi) the rate of interest shall not exceed 6 per cent. per annum or such less rate as may be notified in this behalf by the Provincial Government or the rate agreed upon between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is the lowest.

#### COMMENTARY

*Scope of the section* :—Like the corresponding S. 54 of the old Act this section has been sub-divided into two sub-sections, the first of which prescribes the next step, namely the making of an award, save as otherwise provided in S. 33, which corresponds to S. 55 of the said Act, to be taken after scaling down has been done under the preceding section and the second provides that the award to be made under this section shall conform to a prescribed form and shall be drawn up with due regard to the specific provisions contained in the six clauses therein.

The first sub-section is in the same terms except for the necessary substitution of the word "Court" for the word "Board" and of the figures "31" and "33" for the figures "52" and "55" of the sections referred to therein.

The second sub-section has however been re-enacted after making very drastic changes therein. In the first place the words "shall include the following particulars" have been substituted by the words "shall be drawn up subject to the following provisions".

This is a material change by itself because whereas the former wording made the provision inclusive the present one makes it exclusive, *i. e. to say*, whereas the former implied that other particulars besides those mentioned in the sub-section may be prescribed by rules, as to which see S. 54 (2) (n) and S. 83 (2) (l), the present one leaves no room for any such implication. This is an inference which is supported by the absence of any clause of that nature in, and of any clause whatever referring to S. 32 (2) in the corresponding S. 55 (2), of this Act. Secondly, whereas the particulars prescribed by the old sub-section had 14 clauses marked (a) to (n), the present sub-section has only 6 marked (i) to (vi). This is due to there being no clauses in this sub-section corresponding to clauses (a), (b), (c), (d), (e), (f), (g), (h) (i), (k) (l) (m) and (n) in S. 54 (2) of the old Act and although on account of the omission of 12 such main clauses there ought to remain two only there are altogether six clauses here because the first proviso to the old clause (b) has been split up into two parts and given nos. (i) and (ii), clause no. (iii) divided into 7 parts (a) to (g) with a proviso is made up of the contents of the proviso to the old clause (g), clause (iv) corresponds to the first proviso to clause (h) in the old sub-section, clause (v) corresponds to the proviso to the old clause (i) with a change in phraseology and clause (vi) contains the gist of the old clause (j) together with its proviso.

In spite of such changes the principles underlying the material provisions, as to laying charges for the debts, the order of priority, the minimum number of instalments to be allowed, the liabilities for meeting which deduction should be made while fixing the net income of the debtor for fixing the amount of each instalment, and the rate at which future interest should be allowed, remain unaffected. The only material change that is noticeable is in the provision as to ordering delivery of possession of a debtor's property to him before the satisfaction of his debts including those secured. As to that clause (v) is now so worded as to leave it to the discretion of the Court whether to order it or not in particular cases whereas clauses (i) in the old sub-section took it for granted that such an order would be made and provided for imposing some conditions on the debtor while making an order

for it and the proviso debarred the Board from refusing to pass such an order on certain specified grounds.

Subject to those modifications then the comments on the old S. 54 at pp. 241-44 of the Commentary on the old Act may be read in this connection.

*Finality of an award made under this section:*—An award made under this section is final so far as the Court making it is concerned except when it is discovered that a property belonging to a debtor had not been included in it or that a property included therein did not belong to him. In any of these cases the Court has power under S. 37 to re-open the award, re-adjust the debts of the debtor and if the debtor is found to have been guilty of fraud, to refrain from giving him the benefit of S. 31.

*Appeals from awards made under this section:*—Under the terms of clauses (vi) in S. 43 (1) every award made under this section is appealable to the District Court.

33. (1) Where the amount of debts of the debtor as scaled down under section 31 by it

Court to prepare  
scheme for adjust-  
ment of debts throu-  
gh Provincial Land  
Mortgage Bank.

exceeds half the value of the debtor's immoveable property as determined by it, the Court shall intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immoveable property and call upon them to state in writing within a specified period not exceeding one month whether they agree to the further scaling down of the said debts so as to reduce them to a sum not exceeding half the said value of the immoveable property of the debtor. If all the creditors agree to the further scaling down of the debts, the Court shall make an order directing the debtor to pay the amount of such debts so agreed upon within a period of one month from the date of the order.

(2) Unless the debtor pays the amount of such debts within a period of one month from the date of the order or such extended period not exceeding one month as the Court may allow and produces the creditors' receipt therefor, the Court shall make an award in the prescribed form directing that the Primary Land Mortgage Bank situated in the local area, or if there is no such Primary Land Mortgage Bank in that local area, the Bombay Provincial Co-operative Land Mortgage Bank registered under the Bom. VII of 1925. *Bombay Co-operative Societies Act, 1925*, shall pay the creditors in cash the debt as finally scaled down or, if the creditors so desire, in bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, such bonds being guaranteed by the Provincial Government, for such amount in full satisfaction of all the debts due to them from the debtor. The Court shall further direct that such amount shall be charged on all the immoveable property of the debtor.

(3) The Bank shall be entitled to recover the amount due to it from the debtor in such annual instalments and at such rate of interest not exceeding six per cent. per annum as the Provincial Government may notify in this behalf in the *Official Gazette*, from time to time.

(4) All sums due under an award made in favour of the bank under this section shall be recoverable as arrears of land revenue.

#### COMMENTARY

*Scope of the section* :— This section corresponds to S. 55 of the repealed Act with several material changes. The comments on that section at pp. 246-51 of the Commentary on that Act and the foot-notes

under pp. 245, 246 and 248 will show that this is the fourth legislative form in which the provision for the speedy payment of the debts of a debtor appears in the statute-book of the Province. Into the nature of the first two forms we need not enter here. The inquisitive reader will be able to gather it from the said Commentary and foot-notes. The third form had been given to it barely a year before it was decided to change it. The changes that appear to have been made therein while giving it its present form are :—(1) The previous section had been sub-divided into 3 sub-sections but the present one has been sub-divided into 4 sub-sections. Thereout the fourth is the same as the previous third with only the substitution of the words “under this section” for the words under sub-section (2). This is a mere formal change. (2) Sub-sections (1) to (3) of this section have been made out of the original sub-sections (1) and (2). The provision in S. 55 (1) for the making of awards against the Primary Land Mortgage Bank of the local area, and if there is none such there, against the Bombay Provincial Co-operative Land Mortgage Bank, to pay up the creditors’ dues as scaled down under S. 52 in cash or in government-guaranteed bonds at the option of the creditors, in those cases in which the amount of the debts as so determined is less than or equal to half the value of the immoveable property of the debtor has been omitted altogether. To such cases S. 33 (1) of the present Act does not apply. They are therefore governed by S. 32 only. For those cases in which the said amount exceeds half the said value, the procedure now laid down is the same as had been done previously for such cases, namely to call upon the creditors to declare in writing whether they agree to a further scaling down of the amount of the debts so as to be equal to half the value of the immoveable property of the debtor and if they do so then to proceed further under this section. The only change in that provision introduced by this section is that the maximum time for making the required declaration has been statutorily fixed by this sub-section at one month whereas sub-section (2) of the old section left it to be fixed and specified by the Board in its order. If this is complied with the next step the Court is required to take under sub-section (1) is to pass an order for the payment of the reduced amount by the debtor to his creditors within one month,

The second sub-section impliedly gives power to the Court to extend this period by a maximum period of one month. Within that period, not exceeding two months in all, the debtor is expected to pay up the amount and produce the creditors' receipt therefor. If he fails to do so, the next step for the Court to take is to make an award for the payment of the amount so reduced to the creditors, in cash or government-guaranteed bonds, at their option, by the Primary Land Mortgage Bank in the local area, if any, or by the Bombay Provincial Co-operative Land Mortgage Bank in this Province. Even if there is a Primary Bank in the area, the authority to issue the bonds is vested only in the latter. So that if the creditors choose to have bonds and there is a Primary Bank in the local area, that bank has to pass bonds issued by the Provincial Co-operative Bank and guaranteed by Government.

The third sub-section gives the bank concerned a right to recover the amount of the bonds from the debtor. The old sub-section (1) too did give such a right and impliedly directed the Board to order the debtor to pay it in such annual instalments as it deemed proper. It further gave the Provincial Government authority to notify in the *Official Gazette* from time to time the rate at which interest would be payable on such amount, subject to a maximum of six per cent. per annum. This sub-section however does not transfer to the Court those powers which the Board had in this behalf but authorises the Provincial Government to notify the number of annual instalments as also the rate of interest not exceeding the aforesaid limit. That being so sub-sections (2) and (3) read together leave it doubtful whether the Court is or is not expected to provide at all for the payment of the amount of the bonds by the debtor to the bank paying off his creditor, even though it may not determine the number of instalments or fix the rate of interest, both of which are clearly left by the Legislature to be done by the Provincial Government by notifications issued from time to time. An implied provision for doing so, can be gleaned in the last sentence of sub-section (2) to the effect that the Court shall further direct that such amount shall be charged on the immoveable property of the debtor, for if there is no order



for the payment of an amount by a debtor, no charge for it can be created on his immoveable property by an award.

Sub-section (4) which, as remarked above, is the old sub-section (3) with an insignificant variation, gives the bank the right to recover, the amount paid by it, as arrears of land revenue. It is not clear to me what is the purpose of the Legislature in making this separate provision with regard to an award made under this section because under S. 38 (3) (ii) every amount of an instalment due under an award is recoverable as arrears of land revenue.

*Appeal or revision application against an award made under this section* :—The only kind of award that can be made according to the provisions of S. 33 (1) and (2) is one made after the creditors concerned have agreed in writing to a further scaling down of the debts as provided in sub-section (1). It is immaterial whether it is for payment in cash or by way of execution of bonds. Such an award is expressly excluded from the operation of the positive enactment allowing an appeal against every award made under this Act. Therefore no appeal would lie against it. However on that very ground a revision application would lie to the High Court under S. 115 of the *C. P. Code* read with S. 46 of this Act.

34. The amount of debts scaled down under section 31 or further scaled down under section 33 shall, for the purposes of this Act, be the amount due by the debtor in respect of the said debts and the portion of the debts in excess of this amount shall be extinguished.

No recovery of amount in excess of debts scaled down.

### COMMENTARY

*Scope of the section* :—This section embodies the principle on which S. 53 (1) of the old Act had been based. That principle is that once a proceeding under this chapter has been carried forward to the extent of the scaling down of debts under S. 31, the creditor concerned should be entitled to recover no more than the amount so ascertained. S. 53 contained two sub-sections, the first of which laid down that

principle as to debts scaled down under S. 52 for the purposes of the Act of 1939 and the second contained an elaborate provision extending it to all civil remedies in respect of the debts so scaled down although they may not have been followed by awards for any reason whatever, which meant declaring virtually an extinction of the portion of the debt which had either been disallowed or cut down under S. 42 (2) and also of that which had been further cut down under the operation of S. 52. This section, short as it is, extends the scope of that principle by including in its operation even the portion cut down under S. 33, to which the old section 55 corresponds, and declares the extinction thereof expressly. The qualification contained in the words "for the purposes of this Act" cannot, in my view, be deemed to be applicable to the subsequent provision as to the extinction of that portion and therefore it must be deemed to be absolute and for all purposes. This view is based upon the fact that in the second provision there is a complete verb in the future tense "shall be extinguished".

NOTE that these provisions apply only to awards made under SS. 32 and 33 of this Act.

**35. If the Court making an award under section 32 is at any stage of the proceeding satisfied—**

Debts not to be scaled down in case of collusion.

(1) that the debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor, the Court may refuse to scale down any of the debts of such debtor in the manner provided in section 31 and may make an award for the full amount of the debts due from such debtor;

(2) that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims

of any other creditor, the Court shall order that the debt due by the debtor to such creditor shall be extinguished and such debt shall not be recoverable.

### COMMENTARY

*Scope of the section* :—This section has a wider scope than the corresponding S. 56 of the old Act which has been commented upon at pp. 251-52 of the Commentary on that Act, and which had the same marginal note as this has. The provision contained in the whole of the old section being found from the wording thereof to be dissimilar to those in both the sections, the correspondence is only in principle not as to the nature of the provisions contained in them. The dissimilarity consists in this :—The old section provided that if the Board found at any stage of the proceeding ending with the making of an award that *any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any of other creditors*, then the Board shall not scale down any of the debts of such debtor but shall make an award for the full amount of the debts due from such debtor. This is a punishment to the debtor but a reward to the colluding creditor. Sub-section (2) hereof on the other hand provides that in such a case the Court shall order that the debt due by the debtor to such creditor shall be extinguished and that such debt shall not be recoverable. As for punishment to the debtor sub-section (1) provides that, *if such debtor had in collusion with any creditor furnished in such proceeding incorrect information in respect of the debt due by him to such creditor with a view to defeat the lawful claims of any other creditor the Court may refuse to scale down any of the debts of such debtor*. Thus this section provides (1) for punishing the debtor by refusing to scale down his debts if he had collusively and actively furnished incorrect information with regard to a debt due to a creditor with a *mala fide* intention to injure his other creditors and (2) for punishing the colluding creditor by declaring his claim to have been extinguished and become irrecoverable. This

is therefore on equitable and a salutary change in the law on the subject of collusion.

36. (1) Notwithstanding that the person for the adjustment of whose debts an application has been made under section 4 or any of his creditors does not appear on the date fixed for the hearing of the application or on any date to which it may be adjourned, the Court shall proceed *ex parte* to hear the application, decide the preliminary issues and, if necessary, make the award, on the evidence available.

(2) When an application made under section 4 is heard and disposed of *ex parte* under sub-section (1), the decision on the preliminary issues or the award, shall not, except for sufficient reasons, be re-opened merely on the ground that any of the parties did not appear at the hearing.

#### COMMENTARY

*Scope of the section* :—This is quite a new section enabling the Court to proceed *ex parte* at any stage of a proceeding if a creditor or a debtor is suspected to be deliberately remaining absent on the date fixed for hearing or of an adjourned hearing with a view to delay the disposal of the application. The provision contained in sub-section (1) is of the same nature as those contained in Or. IX in Schedule I to the *Civil Procedure Code, 1908*, which has been made applicable by S. 46 of this Act to proceedings under it, “save as otherwise expressly provided in this Act”. This express provision in this Act mentioning all the important stages in a hearing however will be a sufficient answer to any argument that the Court had contravened any other provision in the Act by proceeding *ex parte* against a party to the application at a particular stage. The second sub-section is intended to promote the further progress of an application, for, it says in effect that if an application for setting aside an *ex parte* order and re-hear a matter is

made to the Court it should, where the *ex parte* hearing was followed by a decision on the preliminary issues or by an award, insist upon being satisfied as to the sufficiency of the reason for the party's absence and not grant the application only on the ground of his absence.

*Appeals against orders under this section* :—A reference to S. 43 (1) (v) will show that every order made under sub-section (2) of this section is appealable but that no order made under sub-section (1) is such. The immediate remedy for an order of the latter class would be an application to the Court itself to set aside the *ex parte* order, which is impliedly entertainable under sub-section (2) as well as under Or. IX in Schedule I to the *C. P. Code*, which must be held to apply in such a case for there is nothing in this Act expressly prohibiting such an application.

37. If, after an award is made under section 32, the Court finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Court when the award was made, or that any property included in the award did not belong to the debtor, the Court may, notwithstanding anything contained in this Act, re-open the award and re-adjust the debts in accordance with the provisions of this Act:

Re-opening of  
award and re-adjust-  
ment of debts.

Provided that where the Court is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Court in revising the award shall not give the debtor the benefit of section 31.

#### COMMENTARY

*Scope of the section* :—This section is word to word the same as S. 57 of the repealed Act except for the substitution of the word "Court" for the word "Board" wherever it occurred in the main provision and the proviso thereto and that of the figure

“ 32 ” for the figure “ 54 ” after the word “ section ” in line 1 of the main provision and the figure “ 31 ” for the figure “ 52 ” after the same word at the end of the proviso. That section has been commented upon at pp. 252-53 of the Commentary on the old Act.

NOTE that this section provides for a contingency in which the Court can re-open and revise an award made by it under S. 32.

*Appeal or revision application against an order to re-open an award and against an award made over again :—*None of the clauses in S. 43 (1) provides for an appeal being made against an order made for re-opening an award and re-adjusting the debts of the debtor under this section. On that ground alone a revision application to the High Court would perhaps be held to lie under S. 115 of the *C. P. Code* read with S. 46 of this Act. The question is not however free from doubt because the award which would be made over again in the matter would be an award under section 32 and hence appealable under clause (vi) in S. 43 (1).

38. (1) Every award made under this Act shall, on payment of the court-fee payable under section 44, be registered under the *Indian Registration Act, 1908*, after XVI of 1908 the expiry of the period provided for an appeal, if an appeal is allowed but no appeal is filed and after the disposal of the appeal if an appeal is filed.

Award to be  
registered : how  
executed.

(2) The court-fee on the award shall be paid by the party ordered by the Court to bear the costs :

Provided that any creditor who is not ordered to bear the costs may pay such court-fee. Such creditor shall be entitled to recover the amount of court-fee paid by him from the debtor with the first instalment payable to him under the award:

Provided further that no court-fee shall be payable by a co-operative society.

(3) The award so registered shall be executed as follows ;—

(i) If the debtor makes default in the payment of any instalment due under the award to any creditor such creditor may apply in the prescribed form to the Court for execution of the award.

(ii) If the Court on receipt of such application is satisfied that the debtor has made default in the payment of the instalment the Court shall transfer the award for execution to the Collector and thereupon the Collector shall recover the amount of the instalment from the debtor as arrears of land revenue:

Provided that nothing in this sub-section shall affect the right of Government, a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

#### COMMENTARY

*Scope of the section* :—The principles of the recovery of court-fee, the registration of an award thereafter and its being executable as the decree of a civil court through the Collector are those on which the proviso to sub-sections (1) of S. 61 and SS. 62 and 63 of the old Act had been based. So far as registration is concerned sub-section (1) of this section embodies an important variation. That is that instead of registration being required to be made by the Court or any other court under this Act it requires it to be made by the Sub-Registrar having jurisdiction in the area under the *Indian Registration Act, 1908*.

The whole section has been sub-divided into 3 sub-sections. The first thereof provides for the registration of the award in the manner above-stated, the second relates to the payment of court-fee and the third relates to the procedure for the recovery of any instalment due



under an award but not paid by the debtor. Sub-section (2) has two provisos added to it and sub-section (3) has 2 subsidiary clauses and a proviso.

*Sub-section (1) :—*It is provided that every award made under this Act which means those made under SS. 8, 9, 32 and 33 shall be registered under the *Indian Registration Act, 1908* after an appeal is disposed of, if one has been filed, and after the time for appealing has expired, if an appeal is allowed. This means that an award against which no appeal lies may be registered at once or after a reasonable time.

NOTE that no particular time-limit has been fixed for this purpose. However the registration being required to be made under the *Indian Registration Act, 1908*, the time for the presentation of an award for registration under it would be regulated by the provisions in that respect contained in SS. 23 and 25 thereof. Under S. 23 it is 4 months but in cases of urgent necessity or unavoidable circumstances a delay upto 4 months after the expiry of the first 4 months can be condoned.

*Sub-section (2) :—*This sub-section provides for the payment of court-fee by the party ordered to pay the costs of the proceeding. There is now no provision in S. 32 (2) corresponding to clause (l) in S. 54 (2) of the old Act. However S. 35 of the *C. P. Code, 1908*, can be held applicable to the proceeding owing to the provision contained in S. 46 of this Act.

*Proviso 1 :—*This proviso is to the effect that even if a creditor is not liable to pay the costs of the proceeding under the terms of the award made therein he may pay the court-fee that may be payable and that in such a case he shall be entitled to recover from the debtor the amount of the court-fee so paid along with the first instalment recoverable by him.

*A point for consideration in this proviso :—*This proviso roughly corresponds to sub-section (2) of S. 61 of the old Act. That sub-section began however with the statement, "If the debtor fails to pay etc", and that meant that it related to the case of a debtor being ordered to pay the court-fee payable on the award. Here



on the other hand this proviso follows a general provision in the sub-section to the effect that the court-fee shall be paid by *the party* ordered by the Court to bear the costs and provides that any creditor not ordered to bear them may pay such court-fee and that means that if a party *i. e.* a debtor or a creditor is ordered to bear the costs and he does not pay the court-fee, any other creditor may pay it. So far it is alright. It only means that even in case of a default by one creditor another may pay the court-fee. But when it further says that the paying creditor would be entitled to recover the amount so paid from the debtor along with first instalment payable to him, the question arises whether he would have such a right to recover the amount from the debtor even if the party ordered to bear the costs is another creditor. There is no clue to the intention of the Legislature in this respect.

*Proviso 2* :—This is simple enough. It debarsthe Court from ordering a co-operative society to pay court-fee on any award in which it is interested, presumably as a creditor.

*Sub-section (3)* :—This is the only sub-section dealing with the question of execution of an award generally. The provision in clause (i) therein is however so worded as if it were intended to be made use of only when the debtor has failed to pay any instalment in time. The second clause obviously prescribes what the Court shall do if a creditor has moved it by making an application for execution under the previous clause. The procedure provided for therein is that the Court shall transfer the award for execution to the Collector of the district and that the latter shall thereupon proceed to recover the amount due as arrears of land revenue.

*Important lacuna in this Act* :—So far so good. But can the wording of either the initial sentence in sub-section (3), namely : “The award so registered shall be executed as follows,—” or of any of the clauses that follow be held to justify the view that even if a party is ordered by the award to deliver possession of a property to another and does not deliver it, the party entitled to recover it under the award can avail himself of this sub-section for recovering

it? I believe the Court cannot read such an important provision in a section in which it is not expressly contained.

Another and a still harder case is that of the method of execution of an award made by any of the Boards which had been set up under S. 4 of the repealed Act throughout the Province except the metropolis and which consequently must have made thousands of awards under the said Act till 26th May 1947. The definition of the term "award" given in S. 2 (1) of this Act is not applicable to such an award because it "means an award made under sub-section (4) of section 8 or section 9, 32 or 33 or as confirmed or modified by the Court in appeal". It is such an award only that is required to be registered under sub-section (1) of this section because it begins with the distinct wording "Every award made under this Act etc." and it is "The award so registered" which "shall be executed as follows:—" under this sub-section. Where then comes in an award made by a Board under the *Bombay Agricultural Debtors Relief Act, 1939* which is repealed by S. 56 (2) of this Act? True, it has a proviso to the effect that all proceedings pending before any such Board shall be continued before the Court as if an application under section 4 of this Act had been made to the Court but that is intended to provide for the continuance of proceedings pending before the Boards at the time of their dissolution. Can the proceedings in which awards had been made at any time between 1st January 1942 or any other date of establishment and 27th May 1947, on which all the Boards were simultaneously dissolved, be held to be pending before them on the latter date? It may be that some of the awards may have been completely satisfied but there must necessarily be thousands of them which may have wholly or partially remained unsatisfied and no applications for their execution may be pending before the Boards on the said date. What is the remedy of the creditors in whose favour such awards may have been made? Even after the most anxious consideration I do not find any express provision made in this Act for the execution of such an award. If the case is deemed to fall under clause (c) or (e) in S. 7 of the *Bombay General*

*Clauses Act, 1904* and the repealed Act is deemed to remain alive so far as S. 63 thereof is concerned, it is all right. Otherwise there seems no other remedy open to the creditors except a suit to enforce the award because even an application for filing the award and obtaining a judgment of a competent court thereon as if it were the award of an arbitrator made without the intervention of the court under the provisions of S. 31 of the *Indian Arbitration Act, 1940* which in principle corresponds to para 20 in Schedule II to the *C. P. Code, 1908*, which has been repealed, cannot be made, as it is not an arbitration award *i. e.* an award made by a privately-chosen arbitrator on the strength of an arbitration-agreement voluntarily entered into by the parties to a dispute as defined in section 2 (a) of that Act, which alone is executable as a decree of the court. In this connection it may be noted that there is no section in this Act corresponding to S. 73 of the old Act which barred suits and proceedings in connection with such awards.

*Proviso to this sub-section:—*This is in the same terms as proviso 2 to S. 63 of the old Act which has been commented upon at p. 267 of the Commentary on the said Act.

*Appeal or revision application against an order under this section:—*A reference to S. 43 (1) will make it clear that there is no provision in it for filing an appeal against an order made under any of the sub-sections of this section. The only remedy of a party aggrieved by an order under any of them is therefore a revision application under S. 115 of the *C. P. Code, 1908*, the provisions of which have been extended to proceedings under this Act by S. 46 thereof.

39. (1) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted the payment of the whole of the instalment due for that year and the full amount of the instalment due for each sub-

Postponement of payment of instalment in case of remissions, etc.

sequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

(2) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 8, 9, 32 or 33 shall be postponed for one year.

### COMMENTARY

*Scope of the section* :—This section is in exactly the same terms as S. 64 of the old Act with this difference only that the numbers of the sections referred to in both the sub-sections thereof have been changed from “24 or 54” to “8, 9, 32 or 33”. That section has been commented upon at pp. 268-70 of the Commentary on the said Act.

It may be noted that whereas the sections mentioned in the old S. 64 were two only, namely “24” and “54” those mentioned in this are four namely, “8”, “9”, “32” and “33” which correspond the old sections “23”, “24”, “54” and “55”. The omission of the old S. 23 even after the award to be made thereon had ceased to be one under S. 54 after its amendment in 1945 had raised a serious problem for consideration by the Collectors charged with the duty of executing awards under S. 63 of the old Act. The nature of that problem has been explained at pp. 269-70 of the Commentary thereon. The inclusion of S. 8 in this section along with SS. 9 and 32 puts an end to that problem and that of S. 33 therein extends the scope of this section to an award made thereunder in favour of a bank in place of the creditors of the debtor on its paying off the latter in cash or on their claims under the award being bought off by it on passing bonds to them as provided in that section.

40. Notwithstanding any law or contract but subject to the provisions of section 41, no alienation of any property belonging to a debtor who is a party to any proceedings or award under this Act, made by him before all this debts are discharged shall be valid except with the previous sanction of the Provincial Government.

No alienation by debtor before discharge of debts valid.

### COMMENTARY

*Scope of this section* :—This section corresponds to S. 65 of the old Act with certain variations. In order to suit them the marginal note to it has also been amended. Those variations are :—(1) The figure “66” after the word “section” has been substituted by the figure “41”; (2) The words “of any property belonging to the debtor” have been added after the words “no alienation”; (3) The words “made by a debtor” following the same words have been deleted; (4) The words made by him before all his debts are discharged” have been added after the words “under this Act,”; and (5) the words “of any property belonging to the debtor or included in the award” which existed after the said words have been deleted. Thereout the only variation that affects materially the nature of the provision in the section is no. 4. This makes it clear that the operation of the section is limited to the stage at which all the debts of the debtor are discharged. This was not clear from the old section. The comments thereon at p. 271 of the Commentary on the old Act may be read subject to the above remarks.

NOTE that proviso 1 to sub-section (2) of S. 56 directs the proceedings pending, before the Boards established under the old Act, at the date of their dissolution, to be continued before the Courts as if the applications with respect thereto had been made to them under S. 4 of this Act but that there is no provision anywhere to treat the awards made by such Boards as if they had been made by the Courts under S. 8, 9, 32 or 33 of this Act, as the case may be. The consequence is that the restraint on alienations imposed by S. 65 on debtors who were parties to such proceedings under the old Act as had ended in awards would be deemed to have been lifted by the repeal of the old

Act and no fresh one would be deemed to have been imposed by this Act. I doubt whether the Legislature intended such a consequence to follow.

NOTE also the definition of the word "award" in S. 2 (1) of this Act.

41. If the Court or the Court hearing an appeal against the award is at any time satisfied that it is in the interest of debtor that any part of his property should be sold in liquidation of his debt or part thereof, such Court may permit the debtor to sell such part of of the property for such purpose within a specified period. If the debtor fails so to sell it, such Court may order an officer of the Court to sell the same. The property ordered to be sold under this section shall be sold by such officer in the manner prescribed:

Court may order sale of debtor's property in liquidation of his debt.

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (2) of section 47.

#### COMMENTARY

*Scope of this section* :—This section corresponds in principle to S. 66 of the old Act. But the actual provisions therein differ substantially from those contained in that section. Thus in the first place this section like its predecessor confers power upon the Court, which takes the place of the Board, and the Court in appeal to order the sale of any part of the property of a debtor at any stage for the liquidation of his debt or a portion thereof if it is in his interest to do so but instead of directing it to make an order for its sale it empowers them to permit the debtor to sell it within a specified period and thus to give him an opportunity to get a price for it to his satisfaction. Secondly, if the debtor fails to sell it as ordered, it empowers the Courts to order their respective officers to sell the part of the property instead of directing them to refer the matter to the Collector for conducting the sale. While so empowering them, it again provides for the manner of conducting

the sale to be prescribed by the Provincial Government under its rule, making power under S. 55 (2) the relevant clause wherein is clause (i). Lastly, the only change in the proviso consists of the substitution of "sub-section (2) of section 47" for "sub-section (3) of section 68", which is only a formal change.

*Appeal or revision application against an order under this section.*—A reference to S. 43 (1) will show that an order under this section is not one of the orders against which an appeal is allowed under any of the clauses therein. However a revision application can be made against such an order under S. 115 of the *C. P. Code, 1908* by virtue of the extension of its provisions to proceedings under this Act by S 46 thereof.

42. Except in proceedings under sections 24 and 28,  
no pleader shall be entitled to appear on  
behalf of any party in any proceeding  
before the Court or the Court in appeal  
under this Act.

Pleaders etc.  
excluded from  
appearance.

Provided that if, the Court after examining the parties to any proceeding before it, or the Court in appeal, is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, it may allow the parties to be represented at their own cost by a pleader :

Provided further that pleader's fees shall not be allowed as part of the costs for the appearance of a pleader in any proceeding under this Act.

#### COMMENTARY

*Scope of the section* :—This section takes the place of S. 67 of the old Act. It is not however in the same terms as the preceding

one but, while retaining the original structure, it contains several important variations, which are the following ones:—

*Main Provision* :—(1) The initial words “Except in proceedings under section 24 and 28” are quite new; (2) the words “vakil” or mukhtyar and no advocate or attorney of a High Court” which followed the words “no pleader”, have been dropped and (3) the word “Board” between the definite article “the” and the words “under this Act” has been substituted by the words “Court or the Court in appeal”.

*Proviso 1* :—(1) The word “Board” in the first line is replaced by the word “Court”; (2) between the words “it” and “is of opinion” the words “or the Court in appeal” have been added for the first time; (3) the words “vakil or mukhtyar or advocate or attorney of a High Court” which followed the word “pleader,” where it occurs for the first time, have been omitted; (4) the words “the Board” which followed the said omitted words have been replaced by the word “it”; (5) the words “such party at its own costs” are replaced by the words “the parties”; (6) between the words “to be represented” and “by a pleader”, the words ‘at their own cost’ have been inserted and (7) the words “vakil or mukhtyar or advocate or attorney of a High Court” which occurred after the words “by a pleader” at the end of the sentence have been omitted.

*Proviso 2* :—Between this proviso and the original proviso 2 there is no similarity even in the underlying principle.

The original section has been commented upon at pp. 275-81 of the Commentary on the old Act. However some of the variations above-noted are so important that some fresh comments on this section become necessary so that the legal effect of the variations may be clearly brought to light.

The first important change is the insertion of the initial words “Except in proceedings under sections 24 and 28”. They are required to be read along with the present proviso 2. Their combined effect is that pleaders, who according to the definition of the



word "pleader" given in S. 2 (15) of the *C. P. Code* include advocates, vakils and attorneys of a High Court can, as of right, appear for the parties to proceedings under SS. 24 and 28 of this Act who engage them but that even a successful party cannot recover the fees paid to his pleader from the unsuccessful party ordered to bear the costs of the proceeding in which he may appear, for the second proviso has been so worded as to preclude the Courts generally from allowing pleader's fees as part of the costs of any proceeding under this Act and so acts as a limitation on the exception that has been introduced in this section.

The omission of the words "vakil etc." does not make any difference because no mukhtyars are allowed to appear for parties in the civil courts and the others are included in the term "pleader" as states above. In view of this deletion the abbreviation "etc." after the word "pleader" in the marginal note should also have been deleted. But it seems to have been repeated in this Act through oversight.

The substitution of the word "Court" only for the word "Board" would have made no difference in the scope of the provision but the addition of the words "or the Court in appeal" thereafter make the provisions of this section as a whole now binding even on a Court hearing an appeal under this Act. This is no small change because the District Court will now have no legal assistance while hearing appeals under all the clauses in S. 43 (1) other than clauses (iii) and (iv), except when it chooses to act under proviso 1, which is applicable as well to proceedings before an Appellate Court as to an original Court under this Act except for the fact that whereas the latter is required by that proviso to examine the parties before forming an opinion of the kind mentioned the former is not under an obligation to do so.

Another effect of the changes made in proviso 1 is that if any of the Courts forms such an opinion it has power to allow all the parties, not simply the incompetent party, to be represented by a pleader. This is the effect of changes nos. 6 and 7 in the said proviso.

The comments on the old section must be made use of subject to the above remarks.

NOTE that the proviso to S. 67 which provided for the appointment by the parties of agents for appearance who should not be of the pleader class has not been re-enacted here in any form. That gap is however filled up by the extension of all the provisions of the *C. P. Code, 1908* to proceedings under this Act by S. 46 thereof.

43. Notwithstanding anything contained in any other Appeals. law save as otherwise provided in section 51.

(1) an appeal shall lie—

(i) from every order passed under sub-section (3) of section 8;

(ii) from every order passed under section 17;

(iii) from every order passed under section 24;

(iv) from every order passed under section 28;

(v) from every order passed under sub-section (2) of section 36;

(vi) from every award made under this Act other than an award made in terms of a settlement under sub-section (4) of section 8 or under section 9 or on award made under section 33 before the making of which the creditors' agreement has been obtained under sub-section (1) thereof or an award before the making of which neither the debtor nor any of the creditors produced evidence to enable the Court to determine the amount of debt due from the debtor;

(2) an appeal from the Court shall lie to the Court of the District Judge;

(3) no second appeal shall lie against any decision, order or award of the Court under this Act.

## COMMENTARY

*Scope of the section*.—This section on appeals corresponds to SS. 9 (1) and 14 of the old Act. Out of its three sub-sections the first two re-enact with some variations the provisions of S. 9 (1) and sub-section (3) re-enacts those of S. 14 with some variation in language.

S. 9 (1) of the old Act contained in a single sentence provisions as to the appeals allowed against certain awards and decisions of the Board and also as to the Court in which they should be filed. It had been so worded as to exclude from its purview the awards made in terms of a settlement under SS. 23 (4), 24 and 25 and by so doing to include all other awards within it and to bring within it only the decisions made under S. 23 (3) and that under 35 (2) dismissing an application. S. 43 (1) on the other hand brings within its purview every order passed by the Court under, (i) S. 8 (3) which corresponds to S. 23 (3) of the old Act, (ii) S. 17 which corresponds to S. 35 of that Act, (iii) S. 24 which corresponds to S. 45 (1) of the old Act and contains in its sub-section (2) an entirely new provision, (iv) S. 28 which corresponds to S. 49 of the old Act but the nature of the provisions in whose two sub-sections are of quite a different nature from that of those of the said section and (v) S. 36 (2) the provision wherein is entirely new. Moreover in clause (vi) thereof S. 43 (1) provides for an appeal being made against every award made by the Court under this Act but excludes from its purview those made in terms of a settlement under SS. 8 (4) corresponding to the old S. 23 (4), S. 9 corresponding to the old S. 24, those made after taking a creditors' agreement under S. 33 corresponding to the old S. 55 (2) and also those made in proceedings in which neither the debtor nor any of the creditors had adduced any evidence before they were made.

It thus appears that the right of appeal has been extended by S. 43 (1) to many more classes of orders and awards than those to which it had been extended under the corresponding S. 9 (1) of the old Act.

There is no change so far as the jurisdiction to entertain such appeals is concerned. There is no provision corresponding to that contained in S. 9 (2) of the old Act but even in its absence the District Judge can under S. 24 of the *C. P. Code, 1908* transfer any appeals from his file to the Civil Judges (Senior Division), if any, other than those designated by the definition of the word "Court" in S. 2 (3) hereof and to the Assistant Judges under him, provided they have been duly empowered under the provisions in that behalf in the *Bombay Civil Courts Act, 1869*.

S. 43 (3) is differently worded than the corresponding S. 14 of the old Act. Firstly, the absence of the initial words "notwithstanding anything contained in any other law" is easily marked out. Secondly, the substitution of the word "second" for the word "further" attracts our attention. Thirdly, in place of the words "against a decision or order" we find the words "against any decision, order or award". Since the word "Court" there meant the Court of the District Judge hearing an appeal, "no further appeal" meant no second appeal and the word "award" was not necessary because such a court was not expected to make an award. Here on the other hand "the Court" means the Court of the Civil Judge of the Senior or Junior Division having ordinary jurisdiction in the area concerned. One appeal against orders passed or awards made by it had been provided for in S. 43 (1). What was to be barred was a second appeal and the addition of the word "award" was necessary.

NOTE that there is no section or a part of a section corresponding to S. 12 of the old Act which prohibited an Appellate Court from modifying or setting aside a decision or an award except on any of the grounds mentioned in the four clauses therein. The effect of its absence is to place appeals under S. 43 on the same level as those made under the *C. P. Code, 1908*.

44. (1) Notwithstanding anything contained in the  
*Court-fees Act, 1870*, court-fees VII of 1870.  
 Court-fees. payable in respect of proceedings under  
 this Act shall be at the following rates:—

(i) on an application under sub-section (1) of section 4 or of section 8 or on an award under sub-section (4) of section 8 or section 9-Re. 1;

(ii) on an award other than an award specified in clause (i)-Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50;

(iii) on an appeal against a decision of the Court under sub-section (3) of section 8 or sub-section (2) of section 17-Rs. 2;

(iv) on an appeal other than an appeal specified in clause (iii)-Re. 1 for every hundred rupees, or part thereof, of the amount of the award, subject to a maximum of Rs. 50.

(2) Notwithstanding anything contained in any law, the court-fees payable in respect of proceedings under this Act shall be a first charge on the property of the party ordered to pay the costs and shall be recoverable in such manner as may be prescribed.

### COMMENTARY

*Scope of the section* :—There is no single section in the old Act to which this section can be said to correspond exclusively. However provisions as to the payment of court-fee lie scattered in numerous sections of that Act which are :—SS. 11, 18 (2), 23 (4), 24 and 60. This section brings all of them with some salutary variations within the limits of a single section.

*Sub-section 1* :—The provisions contained in this sub-section are to be enforced inspite of anything to the contrary contained in the *Court-fees Act*. Clauses (i) and (ii) thereof relate to original proceedings and clauses (iii) and (iv) to appeals. According to them fixed fees are payable in respect of certain applications, awards and

appeals and those according to a prescribed scale subject to a maximum of Rs. 50 in respect of awards and appeals not falling in the above category.

*I. Fixed fee.-Re. 1:—*(1) Applications for adjustment of debts under S. 4 (1); (2) Applications for recording settlements under S. 8 (1); (3) Awards made under S. 8 (4) and S. 9.

*Rs. 2:—*Appeals against decisions of the Court under S. 8 (3) and S. 17 (2).

*II. Ad valorem fee* at Re. 1 for every 100 rupees or part thereof of the amount of the award subject to a maximum of Rs. 50:—(1) Every award other than those made under S. 8 (4) and S. 9; (2) Every appeal other than those against the Court's decisions under S. 8 (3) and S. 17 (2).

Under the old Act applications for adjustment were to be treated as plaints in suits for accounts for this purpose and court-fees on the awards other than those made under SS. 23 (4) and 24 were to be paid on ascertaining their amounts on making elaborate calculations as laid down in S. 60 (1) which had to be explained in the Comments at pp. 258-61 of the Commentary on that Act.

*Sub-section (2):—*This sub-section contains a re-enactment of the provisions of S. 60 (2) of the old Act with a slight variation in the wording thereof and an addition of the words "and shall be recoverable in such manner as may be prescribed". This addition empowers the Provincial Government to prescribe by a rule made under S. 55 (2) (j) the manner in which the court-fees due from a party are to be recovered.

45. Any notice required to be served under this Act shall be served in the manner

Notice how served. provided in the *Code of Civil* V of 1908.

*Procedure, 1908*; and when rules are made in that behalf in such manner as may be prescribed.

## COMMENTARY

*Scope of the section* :—This is quite a new section. It contains a double provision, namely that till the time when a manner of serving the notices required to be served under this Act is prescribed by rules, the service thereof shall be made in the manner prescribed by the *Code of Civil Procedure* and that since then that should be done in the manner prescribed thereby.

*Notices required to be served under this Act* :—This Act contains express provisions in several sections for the service of notice. Those sections are :—(1) S. 5 (1) (a) and (b); (2) S. 8 (3); (3) S. 14 (a) and (b); (4) S. 19 (2); (5) S. 26 (1) and (2) and (6) S. 28 (1). Besides these there are provisions of such a nature in SS. 24 (2), 33 (1) and (2), 35, 37, 40, 41, and 53 (2) that the original Court would be required to issue notices to the parties whose presence before it is necessary in the interest of justice and fair play.

*Manner of service provided for in the Code* :—This section does not specify the particular provision which the Legislature expects the Court to follow. This question is not free from doubt because the *Code* contains several provisions for serving notices but does not prescribe a uniform manner of serving all of them. See on this point SS. 80 and 142 and Or. XI r. 15, Or. XII rs. 1, 2, 3, 4, 5, Or. XXI r. 22 and Or. XXX r. 5 in Schedule I to the *Code*. Perhaps the Legislature meant that the Court, should, pending the publication of rules under S. 55 (2) follow the manner of serving summonses prescribed in the *Code*. In that case reference may be made to Or. V in Schedule I to the *Code* wherein rules 9 to 30 provide for the service of summons in several kinds of circumstances.

*Rules for the Service of notice* :—The Provincial Government has been empowered to make rules particularly for this purpose by clause (k) in S. 55 (2) of this Act.

46. Save as otherwise expressly provided in this Act, the provisions of the *Code* v of 1908. of *Civil Procedure*, 1908, shall apply to all proceedings under this chapter.

Provisions of  
Civil Procedure  
Code to apply to  
proceedings.

## COMMENTARY

*Scope of this section* :—In the Act of 1939 there was S. 7 (1) which empowered the Board to exercise in the course of proceedings under the Act the same powers as are vested in civil courts under the *Civil Procedure Code, 1908* when trying a suit and particularly invested it with some of those powers intended to be used in certain contingencies. This provision was "Subject to the provisions of this Act and any rules". Further before the Act was put into operation partially in some areas the Provincial Government had framed rules under S. 83 thereof among which there was rule 35 directing that the Board shall in the proceedings before it, follow the procedure laid down in the *Code*, so far as may be, in respect of any matter not provided for in those rules. This section now distinctly lays down that the provisions of the *Code* shall apply to all proceedings under this chapter with the reservation contained in the words "Save as otherwise expressly provided in this Act". It may be noted that this section does not like S. 7 (1) of the old Act contemplate the possibility of the Provincial Government framing any rules on this subject and S. 55 (2) does not contain any clause referring to this section. Therefore the Court is to be guided by the provisions of the *Code* in all the proceedings under this chapter save in so far as there is an express provision in this Act to the contrary. Mark the words *under this chapter* which imply that this provision is confined its operation to cases arising out of the operation of SS. 4 to 46 only and not of the whole Act as under S. 7 (1) of the old Act or R. 35 of the rules made under it.

The saving clause means that if there is any contrary provision as to the procedure to be followed in the case of a particular kind of proceeding under this chapter that provision alone is to be followed.

This section also covers the cases of appeals filed under this Act because S. 43 forms part of "this chapter" and there can be no doubt that appeals fall within the category of "all proceedings under this chapter."



## CHAPTER III

### INSOLVENCY PROCEEDINGS.

47. (1) If at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding twelve in number, the Court shall make an order adjudicating the debtor an insolvent.

Court to declare debtor insolvent in certain circumstances.

(2) After the debtor has been adjudicated an insolvent, the Court shall direct that such portion of the property of the debtor, liable to attachment and sale under section 60 of the *Code of Civil Procedure, 1908*, V of 1908, excluding such portion thereof as the Provincial Government shall from time to time notify in the *Official Gazette* as the minimum necessary for the maintenance of the debtor and his dependants, as may be required to liquidate all the debts of the debtor, shall immediately be sold free of all incumbrances in liquidation of all debts outstanding against such debtor.

### COMMENTARY

*Scope of this chapter* :—As the heading below the number of this chapter shows it comprises the sections of the Act containing provisions connected with the insolvency proceedings which may be required to be started. Those sections are five only, namely SS. 47 to 51. The first of them directs the Court to declare an insolvent a debtor before it in any proceeding under the last chapter, if it finds that the debts due by him cannot be liquidated as provided in S. 32 (2)(iv) and to put immediately to sale all his property liable to attach-

ment and sale in execution of a civil court decree except such portion thereof as may be required for his maintenance and that of his dependants. The second provides that the procedure to be followed by the Court in such a case shall be that laid down in the *Provincial Insolvency Act, 1920*, the third prescribes how his assets when realised shall be distributed, the fourth debars every other Court from entertaining or proceeding with any application of a similar nature made to it and the last prescribes that except on the ground stated therein no appeal shall lie against an order made under this chapter.

It can thus be seen that this chapter has the same limited scope as the corresponding Chapter IV of the old Act comprising SS. 68 to 72 thereof. The topics dealt with in the sections of this chapter are also the same as those dealt with in the corresponding sections in the fourth chapter of the old Act. As regards the structure of those sections, SS. 68 and 69 have been subjected to considerable modification before being re-enacted as SS. 47 and 48 but the others have remained in practically the same form while being re-enacted as SS. 49 to 51. The previous history of the law as contained in this chapter can be gathered from the Commentary on the old Act at pp. 285-86 thereof.

*Scope of this section* :—S. 68 of the old Act seems to have been considerably re-modelled and modified in important particulars while being re-enacted as this section. The changes introduced therein are — (1) In place of the three sub-sections in the old section there are two sub-sections only in this. This change is effected by dropping sub-section (2) altogether. This change and the use of the word “Court” only restricts jurisdiction under the section to the original Court only; (2) Besides the merely formal changes consisting of the substitution of the figure “II” for the figure “III” after the word “Chapter” and the word “Court” for the word “Board” the other changes in sub-section (1) are :— (a) the words “for any reason” have been omitted; (b) the words “the debts due from the debtor cannot” existing after the words “finds that” are substituted by the words “the income of the debtor and his movable property are not sufficient to allow his debts to” and the latter are joined to the subsequent words “be liquidated etc.”,

and (c) the words "to be" which existed before the words "an insolvent" at the end have been deleted. The effect of those changes in sub-section (1) is that instead of its being left to the Court to decide which reason is satisfactory for making the declaration the Legislature prescribes that the only reason which shall be considered satisfactory for that purpose is that the debts payable by the debtor should be so large as not to be capable of being liquidated in annual instalments not exceeding twelve from the possible recovery of the price of his movable property when sold and his net annual income; (3) Sub-section (3) to which the present sub-section (2) corresponds in principle, had one main provision in it and two provisos. There is nothing in the present sub-section (2) to correspond to the second proviso thereof, and the main provision and the first proviso have been so amalgamated together and modified as to direct the Court that after making the adjudication it shall direct that the portion of the debtor's property which is liable to be attached and sold in execution of a civil court's decree shall be sold for the liquidation of all his debts, after such portion thereof as the Provincial Government notifies from time to time as necessary for the maintenance of the debtor and his dependants is excluded from it. Under the old section the Legislature had itself prescribed the minimum quantity of land necessary for that purpose and directed the Board to sell at first only one-half of the remaining portion to the exclusion of the minimum declared to be necessary for maintenance purposes.

The comments on the old section at pp. 286-90 to the exclusion of those on sub-section (2) at pp. 287-88 may therefore be read subject to the above remarks. The marginal note to the section continues to be the same as before with the substitution of the word "Court" for the word "Board".

48. The order of adjudication made under section  
47 shall have the force of an order made

Procedure in  
insolvency proceed-  
ings.

by a competent court in the exercise of  
its powers under section 27 of the  
*Provincial Insolvency Act, 1920.* v of 1920.

## COMMENTARY

*Scope of the section* :—This section reproduces in a succinct form the provision contained in S. 69 of the old Act with the slight change of the number of the previous section referred to therein and some other changes in language which tend to brevity without the sacrifice of sense. Thus the paranthetical clause “Whether by the Board or the Court” could have been substituted by the words “by the Court” being inserted between the words “made” and “under section 47” agreeably to change (1) made in S. 68 of the old Act while re-enacting it as S. 47 of this Act but they have not. That does not however cause any change in the sense of the sentence because the reference to the section is enough for the purpose in view. Similarly the whole of the addition made after the figure “1920” in the old section has been dropped but the sense thereof has been clearly and completely conveyed by the substitution of the words “shall have the force of” for the word, “shall be deemed to be” which existed before the words “an order etc”.

For the elucidation of the provision see therefore the Comments on the old section 69 at pp. 290-92 of the Commentary on the Act of 1939.

49. The proceeds realised by the sale of the property of the insolvent under section 47 shall be distributed in the order of priority specified in clause (iii) of sub-section (2) of section 32.

Distribution of  
assets of insolvent.

## COMMENTARY

*Scope of the section* :—This section is in the same terms as the corresponding section 70 of the old Act except for the changes in the numbers of the previous sections and part of the section referred to therein, which were indispensable. The sections 47 and 32 herein referred to are those which correspond to sections 68 and 54 referred to in the old section and clause (iii) of sub-section (2) of S 32 is the clause which takes the place of clause (g) of sub-section (2) of S. 54 referred to therein.

The comments made on the old section at p. 292 of the Commentary on the old Act may therefore be referred to for the explanation of the provision contained in this section.

50. No application or proceeding in regard to the insolvency of a debtor shall lie in or

Bar to application in insolvency in other courts.

shall be dealt with by any other court.

### COMMENTARY

*Scope of the section and change in the law:*—This section is in exactly the same terms as the corresponding S. 71 of the old Act except for the change of the indefinite article “a” for the definite article “the” which existed before the word “debtor” in the latter.

The effect of this change is the material one of debarring other courts from entertaining or dealing with applications for the adjudication as an insolvent of every person who is a “debtor” as defined in S. 2 (5) read with the other cognate provisions contained in S. 2 (4), (7), (14) together with the explanations thereto and S. 6, instead of only the debtor who may have been adjudicated as such under S. 47.

Subject to this change the comments on the old section at pp. 292-293 of the Commentary on the old Act may be referred to for any explanation of the provision contained herein that may be found necessary.

51. No appeal shall lie from any order passed under this Chapter except on the ground that

Appeals barred. the insolvent has failed to disclose all the material facts relating to his assets and liabilities.

### COMMENTARY

*Scope of the section:*—This section is an exact reproduction of S. 72 of the old Act commented upon at pp. 293-94 of the Commentary on that Act.

The said comments may therefore be referred to for an explanation as to why it was necessary to make such a provision, bearing in mind the change in the first section of this chapter as to jurisdiction under it.

Note that the provision in this section is by way of an exception to the general provision as to appeals contained in S. 43 and is there expressly referred to as such.

## CHAPTER IV

### MISCELLANEOUS.

52. In computing the period of limitation for the institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Court or the Court in appeal the period during which the proceedings were pending before the Court in respect of such debt shall be excluded.

Period of proceeding before Courts under this Act to be excluded.

### COMMENTARY

*Scope of this chapter* :—This chapter bearing the same heading as Chapter V of the old Act contains only 5 sections as against the 15 contained therein (73 to 86 in the serial order and 73 A added by the Act of 1945) Those of the latter which have been re-enacted, with the variations which will be noted under each section, are :—SS. 75, 77, 78, 83 and 85. The corresponding sections in the present Act are SS. 52-56 *seriatim*. It follows from this that the sections of the old Act which have not been re-enacted in any form are :—SS. 73, 73A, 74, 76, 79 to 82, 84 and 86.

For an elucidation of the expression *Heading of this chapter* in general see the comments under the same heading at pp. 295-96 of the Commentary on the old Act.

*Scope of the section and change in the law* :—This section is intended to be made use of by a creditor who is required to file a suit or start any other proceeding in an ordinary civil court after the usual period of limitation for doing so has passed away owing to his being engaged in a proceeding under this Act. The only changes made in the old S. 75 while re-enacting it here are :—(1) the words “by the Board or in an appeal” which existed after the word “debtor” and before the words “by the Court” have been deleted and the words “or the Court in appeal” have been inserted after the

latter set of words and (2) the words " Board or " which existed before the word " Court " and the words " or the Collector " which existed after it in the concluding part of the sentence have been deleted. These changes were absolutely necessary because firstly, the work of the Board has been transferred to the Court and another Court, namely the District Court, has been invested with the power to hear appeals and secondly, the Collector's duty to execute an award has been transferred to the Court. They do not make any change in the nature of the provision contained in the section. The comments on the old section made at pp. 299-300 of the Commentary on the old Act are therefore applicable to this section also when read subject to the above formal changes.

53. (1) No person, who is a party to any proceedings or award under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 of the repealed Act or section 54 of this Act on account of any loan advanced to him for the financing of crops under the repealed Act or seasonal finance under this Act, shall hypothecate or sell the standing crops or the produce of his land without the previous permission of the society or of the person, as the case may be, until such loan has been repaid in full.

Alienation of standing crops etc., before re-payment of loan prohibited.

(2) Any person who hypothecates or sells the standing crops or the produce of his land in contravention of sub-section (1), shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 500.

(3) No criminal Court shall take cognizance of any offence under this section except on the complaint in

writing of the Court before which the proceedings were held or which made the award.

### COMMENTARY

*Scope of the section* :—This section is based on the same principles as S. 77 of the old Act with certain important variations in the matter of both language and contents, which constitute an important departure in policy. The first change that attracts our attention is that whereas the old section had two sub-sections, this one has three. Thereout the first two constitute a re-enactment of the provisions of sub-sections (1) and (2) of the old section with the variations to be noticed later on and the third contains an entirely new provision as to the procedure to be followed in the case of a prosecution that may be launched for an offence under this section:

*Sub-section (1)* :—The changes noticeable in this sub-section are :—(1) The word “debtor” after the word “No” with which the sub-section commences has been substituted by the word “person”. This is an important departure in policy because instead of the debtor alone, every one who is a party to any proceeding or award under this Act, whether a debtor under it or not, and who is indebted to a resource society or an authorised person cannot, without permission, enter into a transaction of the nature mentioned herein until he has repaid his loan in full; (2) between the figure “78” of the section and the words “the standing crops” the words “of the repealed Act” etc. upto the words “seasonal finance under this Act” have been inserted and the words “shall alienate or encumber” which existed immediately after the said figure “78” have been substituted by the words “shall hypothecate or sell”. The insertion of the words above referred to seems to have been made because advances for the “financing of crops” as defined in S. 2 (7) of the repealed Act may have been made before this Act came into force and may have remained in arrears on that date and would consequently be found amongst the debts of a debtor to be adjusted under this Act and so also may be the advances made under the conditions to be imposed by the Provincial Government under S. 54 (2) read with



S. 55 (2) (l); The substitution of the words "shall hypothecate or sell" for the words "shall alienate or encumber" indicates however a substantial change for "to alienate" means "to transfer, convey or give away a property or right to another" and therefore includes even transfers without valuable consideration while "to sell" means only "to transfer a property or right for a price paid or promised" and similarly "to encumber" means "to burden with a debt", which can be done both with and without transfer of the right of possession and enjoyment of a property while "to hypothecate" means only "to pledge as a security for a debt" without the transfer of a property. This change in language means therefore a substantial relaxation of the restriction imposed by the old provision on the transactions other than those of sale outright and on the transactions of pledges accompanied by a transfer of the property burdened with a debt created before another which the debtor may be owing to a resource society or an authorised person. The comments on sub-section (1) of the old Act at pp. 302-03 of the Commentary on that Act must therefore be read subject to the remarks made above as to the first and third changes and as having relation to both the kinds of advances referred to in change no. 2 and (3). The full point which had been placed after the words "may be" has been replaced by a comma and the whole of the independent sentence commencing with the words "Any such alienation etc." has been replaced by the following words joined to the previous sentence, namely "until such loan has been repaid in full". This change is an important one. The said independent sentence rendered void only such an alienation as had been referred to in the earlier part of the sentence although what had been prohibited was either to "alienate or to encumber". Moreover the previous sentence prohibited such acts for all times unless made with the permission of the society or the person concerned. Of course such transactions if made after the debts due to them had been discharged could not have been successfully challenged but the language used in the section left room for a doubt. The words now substituted limit the operation of the prohibition to cases of undischarged debts only and does away with the legal effect of the voidness of such a transaction itself. It would remain unaffected civilly though it constitutes an offence under sub-section (2) which follows.

*Sub-section (2)*:—In this sub-section too there are certain variations. They are:—(1) The word “debtor” has been substituted by the word “person”, a change of the same nature as no. 1 in sub-section (1); (2) The words “alienates or incumbers” have been substituted by the words “hypothecates or sells”, a change of the same nature as that latterly mentioned as part of no. 2 in sub-section (1) (3) The words “or a person who knowingly permits .... in his favour” occurring between the word and figure “sub-section (1)” and the word “shall” have been deleted. This omission absolves the creditor concerned from the liability to be punished under the sub-section even though he may have knowledge of the contravention of the provisions of sub-section (1); And (4) The words “for a term” have been inserted for the first time between the words “imprisonment” and “which may extend”. This is a mere verbal change.

*Sub-sections (1) and (2) considered together*:—The combined effect of the provisions in both the sub-sections is that a person who is a party to any proceeding or award under this Act and is indebted to a resource society as defined in S. 2 (10) or to a person authorised to advance loans under S. 78 of the repealed Act or S. 54 of this Act is prohibited from hypothecating or selling his standing crops or the produce of his land without the permission of the society or the person concerned until the debt due to any of them is completely repaid and that the consequence of the contravention of this prohibition is that the person becomes liable to be prosecuted for the offence created by sub-section (2) and punished to the extent mentioned therein.

For the significance of the word “person” occurring in both the sub-sections but not defined in this Act see the comments on S. 2 (14) *Explanation 1 supra*.

*Sub-section (3)*:—This section for the first time prohibits every criminal court from taking cognizance of an offence of that nature unless the Court in respect of a proceeding before or an award made by which it may have occurred files a complaint with respect thereto before it.

Subject to these changes the comments on the old section 77 at pp. 302-03 of the Commentary on the old Act may read for the

elucidation of any doubtful point. The point of jurisdiction to try such an offence has also been discussed there at p. 303.

NOTE that "the person" mentioned in sub-section (1) and referred to in sub-section (2) is "the person who is a party to any proceedings or award *under this Act*". So far as the persons who were parties to the proceedings pending before the Boards dissolved by paragraph 2 of sub-section (2) of S. 56 are concerned they will be deemed to be parties to proceedings under this Act by virtue of the first proviso to that sub-section. But there being no provision in that sub-section or anywhere else in that Act for treating the awards made by such Boards as awards made under this Act for any purpose whatever, parties to such awards cannot be held to have been intended to be governed by the provisions of sub-section (1) of this section and to be treated as having committed an offence and to be liable to punishment under sub-section (2) thereof. This result follows in spite of the persons authorised under S. 78 of the repealed Act having been mentioned as the persons want of whose previous permission would render a hypothecation or sale of the standing crops or the produce of his land by a debtor a transaction prohibited by sub-section (1) and punishable under sub-section (2) because it is only the persons who are parties to proceedings or awards under this Act that are required to take such permission if indebted to a resource society or a person authorised to advance loans under S. 78 of the repealed Act or S. 54 of this Act. NOTE also in this connection the definition of the word "award" in S. 2 (1) of this Act.

54 (1) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors who are parties to any proceedings under this Act or in respect of whose debts an adjustment has been made under this Act.

(2) Such authority shall be granted on such conditions as may be prescribed.

Power of Provincial Government to authorise any person to advance loans to debtors.

## COMMENTARY

*Scope of the section* :—This section is in exactly the same terms as S. 78 of the repealed Act which has been commented upon at p. 304 of the Commentary on that Act. The said comments are therefore applicable to this section also with the modification that the definition of the word “person” given in S. 2 (8 A) of the repealed Act has not been re-enacted. It has however been defined in the *Bombay General Clauses Act, 1904*. Some additional comments are however necessary on the effect of the mutual relation between the provision in this section and in those in certain other sections.

*This section and SS. 2 (13), 3 (iv), 32 (2) (iii) (c), 53 (1) and 55 (2) (b)* :—Sub-section (1) of this section being an exact reproduction of of section (1) of S. 78 of the old Act does not mention the purpose for which loans can be advanced by authorised persons. However when it is read with the other provisions mentioned in the above heading except S. 2 (13) in which the expression “seasonal finance” referred to in those other provisions has been defined, it appears that the Provincial Government is expected to lay down under sub-section (2) of this section a condition that a person authorised under sub-section (1) to advance loans to debtors who are parties to proceedings under this Act or whose debts have been adjusted under this Act, can advance them only for the purpose of supplying “seasonal finance” as defined in S. 2 (13) of this Act. If this view is correct it indicates a distinct departure in policy to cease to authorise the advancement of loans for the “financing of crops” as under S. 78 of the old Act.

*This section and S. 56 (2)* :—Owing to the adoption in sub-section (1) of this section the same wording as that of the corresponding sub-section of S. 78 of the old Act it is clear that adjustments of debts made by the Boards under the old Act do not fall within the purview of sub-section (1) of this section. That being so, any authority to advance loans issued by the Provincial Government under it, will not be able to supply the needs of those debtors whose debts may have been completely adjusted by the Boards under the old Act and the whole of that Act having been repealed by the

first paragraph of S. 56 (2) the said Government cannot issue any authority for supplying their needs either under S. 78 of the old Act or S. 54 of this Act. What then should be inferred to be the intention of the Legislature as to supplying the needs of such debtors? Can it be that it intended to make them free from the restriction as to taking loans only from authorised persons for their agricultural needs? Or is there an important lacuna in this Act in this respect left through oversight? This question will be satisfactorily decided when if at all a case of this nature goes up to the High Court and it decides which of the two above views is correct.

55. (1) The Provincial Government may by notification in the *Official Gazette* and subject to the condition of previous publication from time to time, make rules for carrying into effect the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely:—

(a) the purposes for which loans may be advanced under clause (13) of section 2;

(b) the form of application under sub-section (2) of section 4 and the manner of signing, verification and presentation thereof;

(c) the form of application and the manner of signing and verification thereof under sub-section (2) and the manner of giving notice under sub-section (3) of section 8;

(d) the manner of giving notice and publication of general notice and the form of statement to be submitted under section 14;

(e) the inventories of property, lists of creditors and of debtors and of debts due to and from a debtor, the

examination in respect of property or creditors, the time at which the debtors shall attend before the Court and do other things in relation to property under sub-section (1) of section 16, and the production of books of account, the examination to be submitted to, and the information to be supplied by a creditor in respect of the debt due to him by the debtor under sub-section (2) of section 16;

(*f*) the manner of determining the value of property and other assets under sub-section (1), and the manner of calculating the market value of the lands under sub-section (4), of section 29;

(*g*) the form of award under sub-section (2) of section 32 and sub-section (2) of section 33;

(*h*) the form of application under clause (*i*) of sub-section (3) of section 38;

(*i*) the manner in which property may be sold under section 41;

(*j*) the manner of recovery of court-fees under sub-section (2) of section 44;

(*k*) the manner of service of notice under section 45;

(*l*) the conditions on which authority to grant loans shall be granted under sub-section (2) of section 54.

#### COMMENTARY

*Scope of the section* :—This section corresponds to S. 83 of the repealed Act with certain variations which are noted below.

The first variation that attracts our attention is in the internal structure of the section as a whole. The old section had been sub-divided into 3 sub-sections, of which the first contained a general provision empowering the Provincial Government to make rules for

carrying into effect the purposes of this Act, the second provided for rules being made for the particular purposes specified in its clauses while the third provided for the publication of the rules so made in the *Official Gazette* subject to the condition of previous publication. This section is on the other hand sub-divided into two sub-sections and that saving of one sub-section has been effected by inserting in sub-section (1) words which put an end to the necessity of having a third sub-section.

The internal variations in sub-sections (1) and (2) are:—

*Sub-section (1):*—Besides the insertion of the new words “by notification in the *Official Gazette* and subject to the condition of previous publication” which existed in sub-section (3) and which being inserted here dispense with the necessity of having such a separate sub-section, the only change is the omission of the words “the purpose of” which existed between the words “for” and “carrying”. These words were superfluous even there and therefore their omission makes no difference in the sense of the sub-section.

*Sub-section (2):*—The sentence in the old sub-section which constituted the recommendatory part of it has been repeated in this sub-section word for word but the number of the clauses to which the recommendation related has been reduced from 15, (a) to (o), to 12, (a) to (l). This does not mean that clause (a) in this corresponds to clause (a) in the old sub-section and so on but clause (a) relates to quite a new matter, namely making rules prescribing the purposes for which “seasonal finance” as defined in S. 2 (13) herein can be made. Moreover, the necessary alteration of the figures of the sections or parts thereof as may be necessary has been made. Apart from that some changes in the wording of the clauses were also necessary in view of those made in the old sections or sub-sections while re-enacting them. They having been explained under the respective sections it is not necessary to explain them here over again. I therefore give below only a *Comparative Statement* of the clauses and bring to the notice of the reader the clauses in the old sub-section not re-enacted in this.

COMPARATIVE STATEMENT

New Act S. 55 (2) clause	Old Act S. 83 (2) clause	New Act S. 55 (2) clause	Old Act S. 83 (2) clause	New Act S. 55 (2) clause	Old Act S. 83 (2) clause
( a )	None	( e )	( g )	( i )	( m )
( b )	( c )	( f )	( k )	( j )	None
( c )	( e )	( g )	( l )	( k )	None
( d )	( f )	( h )	None	( l )	( o )

*Clauses in the old sub-section not re-enacted in any form :—*  
 Cls. ( a ), ( b ), ( d ), ( h ), ( hh ), ( i ), ( j ), ( mm ) and ( n ).

The comments on the old S. 83 at pp. 309-10 of the Commentary on the old Act may therefore be made use of subject to the changes noted above.

56. (1) On the expiry of a period of three years from the date of the coming into operation of this Act (hereinafter in this sub-section referred to as the said date) the *Dekkhan Agriculturists' Relief Act, 1879*, shall cease to have force :

Repeal of Act  
XVII of 1879 and  
Bom. XXVIII of  
1939.

XVII of 1879.

Provided that nothing in this sub-section shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 4 of this Act can be made anything done in the course of any proceeding pending in any court on the said date and any such proceeding may be continued, in so far as the continuance is not inconsistent with the provisions of this Act :

Provided further that nothing in this sub-section shall in any way affect the transfer under section 19 of



this Act of any suit or proceeding to which such debtor was a party.

(2) The *Bombay Agricultural Debtors Relief Act, 1939*, is repealed. Bom. XXVIII of 1939.

All Boards established under section 4 of the repealed Act shall be dissolved :

Provided that all proceedings pending before any such Board shall be continued before the Court as if an application under section 4 of this Act had been made to the Court.

Provided further that all appeals pending before any Court under the repealed Act shall be continued and disposed of as if they were appeals under this Act :

Provided also that all appeals against decisions, orders or awards of any Board established under the repealed Act, which but for this Act would have lain, shall, when presented, be deemed to be appeals from the decisions, orders or awards passed by a Court under this Act and shall be disposed of accordingly.

#### COMMENTARY

*Scope of the section* :—Sub-section (1) of this section corresponds to S. 85 of the repealed Act. It is not however in the same terms as that section but differs from it in certain material particulars which will be noticed below. Sub-section (2) has not and could not from the very nature of its provisions have correspondence with any section or part of a section.

*Sub-section (1)* :—S. 85 of the old Act had been sub-divided into 2 sub-sections. Sub-section (1) thereof provided that “the *D. A. R. Act, 1879* shall cease to be in force, in any area for or for a class of debtors in which a Board may be established under S. 4 of that Act from the date of establishment of the Board.” Sub-section (1) of this

section re-enacts that provision with the important modification that the said Act shall cease to be in force (throughout the Province) on the expiry of three years from the date of coming into force of this Act. That being so, and this Act having coming into force from 27th May 1947, the said Act will cease to be in force from the midnight of 26th May 1950 but will till then remain in force for all purposes and for the benefit of all the persons concerned subject to the limitation contained in the first proviso.

*First Proviso* :—This proviso re-enacts in a very limited form the provision contained in sub-section (2) of S. 85 of the old Act. A reference to pp. 311-12 of the Commentary on the old Act will show that the said sub-section laid down in 5 clauses numerous exceptions to the general provision contained in the proceeding sub-section, all of which could be availed of by or against persons who were debtors under the old Act and by or against whom applications under S. 17 thereof could be made. This proviso is a re-enactment of that sub-section so far as the debtors under this Act by or against whom applications can be made under S. 4 of this Act are concerned. However whereas the said sub-section laid down 5 exceptions to the general provision so far as such persons were concerned, this proviso lays down only one exception and that is the same as was provided for in clause (e) of the old sub-section. The result of such a proviso is a provision that notwithstanding anything contained in this sub-section, whatever may have been done in any proceeding pending in any court at the date of expiry of the *D. A. R. Act*, shall be deemed to remain unaffected by the cessure of the operation of the said Act and such a proceeding may be continued till its end under the said Act so far as such continuance is not inconsistent with any of the provisions of this Act but not otherwise.

*The said date* :—It will be seen from the above that I understand by the expression “the said date” as occurring in this proviso to mean not “the date of coming into force of this Act” but the date on which the period of three years, commencing from the date of operation of the Act, expires. To take it as meaning “the date of coming into force of this Act” would in my opinion render

the proviso meaningless because even under the main provision the *D. A. R. Act* is to remain in force for 3 years after that date for all purposes whatever.

The difference between the provision in the present sub-section read with the proviso and that as contained in S. 85 (2) of the old Act is that whereas the latter kept alive the *D. A. R. Act* for the purposes mentioned in the five clauses therein until such time as the contracts, acts done outside the courts, rights, titles, obligations or liabilities, remedies or proceedings or acts done in any court proceedings ceased to exist by the operation of the ordinary law so far as debtors within the jurisdiction of the Boards were concerned this sub-section read with the proviso keeps that Act alive for a period of three years only from 27th May 1947 for all conceivable purposes so far as the debtors within the jurisdiction of the Courts under this Act are concerned and thereafter till the termination of the proceedings pending in any Courts on 26th May 1950 in which something may have been done till that date only so far as such proceedings are concerned. This to my mind means that all suits and applications maintainable against such debtors under the *D. A. R. Act* must notwithstanding anything to the contrary in any other law for the time being in force, be filed in the competent courts within three years and here comes the operation of the second proviso to the sub-section.

*Second proviso* :—This proviso is by way of a rider on the first proviso for it provides that if any suit or proceeding pending in a civil court is liable to be transferred to the Court having jurisdiction under this Act, under S. 19 thereof, the provision in the preceding proviso shall be no bar to its transfer. This proviso is in the same terms as the one to S. 85 (2) of the old Act with the substitution of the figure “19” for the figure “37” and has therefore the same legal effect.

Sub-sections (1) and (2) of S. 85 of the old Act have been commented upon at pp. 312-14 of the Commentary on the old Act. Those comments must be read subject to the above remarks.

The judicial principles applicable in the case of repealed Acts have been given at pp. 314-15 of the said Commentary. In addition

to them the following provisions of SS. 7, 8 and 9 of the *Bombay General Clauses Act, 1904* may be borne in mind in connection with such Acts :—

7. Where this Act or any Bombay Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

8. (1) In any Bombay Act made after the commencement of the Act it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all Bombay Acts made before the commencement of this Act.

(9) Where this Act or any Bombay Act made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references to references to repealed enactments, in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

*Non-debtors or debtors by or against whom no application under S. 4 can be made:—*A reference to S. 86 of the old Act printed at p. 316 of the Commentary on the old Act will show that the said section contained temporary provisions so far as actions by or against persons who were not debtors under the old Act

or by or against whom no application under S. 17 of that Act could be made, were concerned. A reference to the first proviso to this sub-section shows that its operation is confined to the cases of those who are debtors and in respect of whose debts an application under S. 4 can be made. There is also no other provision in this Act on this subject. The right conclusion therefore is that this Act makes no provision specifically applicable to the cases of debts owed by them. It has however been made clear in the earlier part of the comments on this sub-section that the *D. A. R. Act, 1879* is to remain in force for a period of three years from 27th May 1947 for all purposes. That period would be available for enforcing remedies under the said Act in respect of the debts owed as well by non-debtors and debtors by or against whom no application can be made under S. 4 as by debtors by or against whom such an application can be made, for in the main provision there are no words of limitation confining its operation to debts owed by any particular classes of persons as there are in the first proviso.

*Sub-section (2):*—This sub-section is made up of 2 paragraphs, each containing a separate provision in a single sentence, and three provisos.

*Paragraph 1:*—This paragraph contains a provision in clear cut terms that the *Bombay Agricultural Debtors Relief Act, 1939* is repealed. Since it does not mention any specific date from which this provision is to take effect, as does the main provision in sub-section (1) of this section, it must be deemed to have taken effect from 27th May 1947 on which this Act was first published.

As to the legal effect of the repeal see the provisions of S. 7 of the *Bombay General Clauses Act, 1904* re-produced in the Commentary on sub-section (1) above. Reference may also be made if necessary to the judicial principles relating to such provisions given at pp. 314-15 of the Commentary on the old Act and the ruling of the Calcutta High Court cited in the Commentary on S. 2 (6) of this Act.

*References to the repealed Act in this Act:*—In spite of the repeal of the Act of 1939, some of its provisions are found specifically incorporated in this Act by references thereto in S. 2 (v), 3 (iv), 4 (1), 25 (v), 32 (2) (iii) (c), 32 (2) (iv) *Explanation*, 53 (1), paragraph 2 of and provisoes 1, 2 and 3 to the present sub-section of S. 56. Such references have the effect of the revival of the repealed Act to that extent. SS. 8 and 9 of the *Bombay General Clauses Act, 1904* contain statutory provisions relating to such a revival and such references. They have been re-produced for ready reference in the Commentary on sub-section (1) above.

*Paragraph 2:*—The provision in this paragraph is that “all Boards established under section 4 of the repealed Act shall be dissolved.” Such language presupposes the issuing of a notification dissolving the Boards. So far as I have been able to ascertain none has been published in any of the issues of the *Bombay Government Gazette* published in April and May 1947.

*Proviso 1:*—This proviso provides that all the proceedings which may be pending before the Boards at the date of their dissolution under the above paragraph shall be continued by the Court having jurisdiction in that area as if they were proceedings commenced by applications made under S. 4 of this Act.

It is clear that it does not provide for the continuance of any pending proceedings other than those for starting which an application under section 4 of this Act could have been made had this Act been in force when they were started.

*Proviso (2):*—This proviso contains a similar provision for the continuance of those appeals made under the repealed Act which may be pending at the date of the coming into force of this Act.

NOTE that there is a difference between the powers of the Court in appeal under S. 12 of the old Act and those under S. 43 of the present Act as explained in the Commentary on that section *supra*. I believe that by virtue of this proviso all the powers under Or. XLI in Schedule I to the *Civil Procedure Code, 1908* can be exercised by the said Courts.

*Proviso (3)* :—This proviso makes a provision for the entertainment and disposal of such appeals against the decisions, orders or awards made by the Boards till 26th May 1947 as could have been filed under the old Act within the prescribed period if this Act had not been passed. The right of appeal should according to it be determined by a reference to the provisions of the old Act but the disposal of such appeals as are maintainable under them is to be made as if they were “appeals from decisions, orders or awards passed by a Court under this Act”. The above remark made as to the manner of disposal of pending appeals are therefore equally applicable to the appeals of this class.

The decisions, orders or awards against which appeals lay to the District Court are those mentioned and referred to in S. 9 (1) of the repealed Act. The following decisions are specifically mentioned therein, namely those made under S. 23 (3) and those dismissing an application under S. 35 (2). No order has been specifically mentioned or referred to therein. However if a party is aggrieved by an order made under any section whatever in any matter and ultimately an award falling in the category of those which are appealable, is made, a ground of appeal referring to such an order can be added in the memo of appeal. See on this point the ruling of the Bombay High Court in *Badiva Imamsaheb v Hiriyanna*<sup>1</sup>, wherein an appeal against an order disallowing a contention raised under S. 45 as to a transaction being in the nature of a mortgage although not apparently so was held maintainable and heard on the ground that the name of the transferee appeared in the award as that of a creditor to whom nothing was due, although S. 45 was not a section an order made under which was appealable. The awards which were appealable under S. 9 (1) were all except those “made in terms of a settlement under S. 23 (4) or under section 24 or under section 55”. The only other sections under which awards could be made were S. 54 (1), and S. 55 (1) when the consent of creditors was not necessary and consequently could not have been taken

Therefore all awards made under them were appealable and any interlocutory orders passed under any section of the Act such as SS. 32, 39, 40-46, 48-67, 74, 77, and 85 could have been made a ground of attack or defence in an appeal filed against any such award.

For the lacuna as to the want of a suitable provision in S. 38 (3) of this Act for the execution of awards made by the Boards and remaining partly or wholly unsatisfied see the Commentary on that section. Such a provision could have been made in this section by adding a proviso after proviso 1 or some suitable words in that behalf in that proviso itself. It is a point for consideration whether this can be deemed to be unnecessary in view of the provisions contained in any of the clauses (c) and (e) in S. 7 of the *Bombay General Clauses Act, 1904*.

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## APPENDIX I

### THE BOMBAY AGRICULTURAL DEBTORS RELIEF RULES, 1947.

\*R.D.No. 4684/45:—In exercise of the powers conferred by section 55 of the *Bombay Agricultural Debtors Relief Act, 1947* ( Bom. XXVIII of 1947 ), and in supersession of the *Bombay Agricultural Debtors Relief Rules, 1941*, the Government of Bombay is pleased to make the following rules : —

#### COMMENTARY

*Introductory remarks:—*It may be recalled that S. 55 of the *Bombay Agricultural Debtors Relief Act, 1947* confers upon the Provincial Government a power of a general character to make rules for carrying into effect the purposes of the Act by notification in the *Official Gazette* and subject of the condition of previous publication from time to time, and in particular and without prejudice to the generality of the said provision power to make rules for all or any of the purposes specified in clauses (a) to (l) in sub-section (2) of the said section.

These Rules supersede those of 1941 made under S. 83 of the Act of 1939. A reference to the note at p. 83 of the INTRODUCTION to the said Act will show that they were amended several times as exigencies arose from time to time between 1-7-42 and 25-4-45. A further draft of the amendments proposed to be made as required by the amendments made in the Act by Bom. Acts VIII of 1945 and II of 1946 was published at pp. 24-30 of Part IVB of the *Bombay Government Gazette* dated Thursday, 4th April 1946 under R. D. Notification No. 394/45 dated 8th March 1946 but they were not sanctioned till the Government decided in January 1947 to

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\*This notification appeared at pp. 461-82 of Pt IVB of the *Bombay Government Gazette, Extraordinary* dated Saturday, 19th July 1947. A draft of the rules embodied therein had been previously published at pp. 418-39 of the same Part of the *Gazette, Extraordinary* dated Saturday, 12th July 1947 under R. D. No. 4684/45 of the same date.

replace the Act of 1939 itself by a new one. This having been done now, the Rules of 1941 are no longer useful and have hereby been superseded.

Compared with them these rules are simpler. Their number and that of the forms prescribed by them are much smaller also. The old rules comprised 40 original and 2 subsequently added ones and the forms prescribed by them were 24 original and 1 subsequently added one. The number of the present rules is 16 and that of the forms prescribed by them 12 only. This reduction is partly due to the transfer of jurisdiction under the present Act from the Board to the Court and perhaps partly to the possibility of the *Bombay Money-lenders Act, 1947* being likely to be put into operation in the near future.

*Bird's eye-view of the Rules and Forms*:—It would be convenient to the reader to get a comprehensive view of the rules, the forms prescribed by them, the sections of the Act to which they relate and the old rules and forms to which they correspond if they are arranged in the form of a comparative table. I therefore do so hereunder.

COMPARATIVE TABLE

Numbers of the Rules and Forms.	Sections of the Act under which made.	Subject dealt with.	Corresponding old Rules and Forms.
R's. 1-2.	—	Preliminary.	R's. 1-2.
{ R's. 3, 14-16. F's. 1-12.	2 (13), 54.	Seasonal Finance, purposes and conditions. }	R's. 2, 38-40. F's. 22-24.
R. 4. F's. 1-3.	4 (1), 8 (2).	Forms of applications.	R's. 16, 18. F's. 1-3.
R's. 5-6. F's. 4-5.	14	Forms of statement.	R's. 20, 21, 21 A. F's. 6-7.
R's. 7-8.	19 (1), (4).	Valuation of property.	R. 28.
R. 9. F's. 6-7.	32-33.	Forms of awards.	R. 29. F's. 9-10.
R. 10. F. 8.	38 (3).	Form of application for execution. }	—
R. 11. F. 9.	41, 47 (?).	Sale of property.	R. 30. F. 11.
R. 12.	44.	Recovery of court-fee.	—
R. 13.	46.	Procedure generally.	R. 35.

It is apparent from this table that no particular forms have been prescribed for the following :—(1) notice and statement under S. 5 (1); (2) award under S. 8 (4); (3) award under S. 9; (4) notice under S. 19 (2); (5) application under S. 24 (2); (6) notice under S. 26 (1) and (2) and statements under S. 26 (3) and (4), and (7) notice under S. 28 (1).

1. *Short title* :—These rules may be called the *Bombay Agricultural Debtors Relief Rules, 1947*.

2. *Definitions* :—In these rules unless there is anything repugnant in the subject or context, —

- (i) “Act” means the *Bombay Agricultural Debtors Relief Act, 1947*.
- (ii) “Code” means the *Code of Civil Procedure, 1908*;
- (iii) “Form” means a form appended to these rules;
- (iv) “Government” means the Government of Bombay;
- (v) “Section” means a section of the Act;
- (vi) Words and expressions used in the Act and not defined in these rules shall have the meanings assigned to them in the Act.

## COMMENTARY

*Headings of the rules* :—The statement *Short title* between the figure “1” and the actual wording of that rule and similar statements between the numbers of the other rules and their actual wording constitute the respective headings of those rules. They are like the marginal notes to the sections of the Acts and have the same force.

*Principles governing rules generally* :—Rules made under an Act would presumably be governed by the same principles as the Act itself. Therefore for any elucidation that may be found necessary see the Commentary under the headings *Text of an Act and Prea-*

able, at pp. 1 and VI, respectively of the Commentary on this Act and pp. 2 and 5-13 of that on the Act of 1939 referred to therein and for that of the *Authoritativeness of a Government Notification* see pp. 21-22 of the latter.

It should be particularly noted that neither the rules nor the forms can be made use of for interpreting the words of the statute to which they relate<sup>1</sup>. According to the view of the Calcutta and Lahore High Courts<sup>2</sup> it is not the duty of the court to determine whether the rules made under an Act are fair or not. According however to that of the Rangoon and Madras High Courts<sup>3</sup> such rules are enforceable only to the extent to which they are fair and reasonable and within the delegated authority. An elaborate discussion on this point will be found in the judgment of the Madras Court. When it is found that a portion of a rule is *ultra vires* but that which is not is capable of being separated from the former, effect must be given to the latter portion<sup>4</sup>. This is the well-known *Doctrine of Severability* referred to in the ruling of the Federal Court in the case of *Bank of Commerce Ltd., Khulna v. Kunja Bihari Kar and others*<sup>5</sup>. For a further elucidation of this doctrine, if necessary see the Commentary on *Ordinance No. XI of 1945* at pp. 327-40 of that on the Act of 1939.

*Rule 1* :—That mentioned in this rule is the *Short title* of these rules. They have no other long or full title.

*Rule 2* :—This rule is similar in nature to S. 2 of the Act and is worded in the same kind of phraseology. The whole of the *Commentary* on S. 2 of the Act of 1947 and the portions of that

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1. *In re "New Sind"* (A. I. R. 1942 Sind 65, 71) *Sarveshwar Rao v. Umamaheshwar Rao* (A. I. R. 1941 Mad. 152, 153), a case under Mad. Act IV of 1838.

2. *Bijaynagar Tea Co. v. Indian Tea Licensing Committee* (A. I. R. 1943 Cal. 150, 159); *Ismail v. District Board, Hoshiarpur* (A. I. R. 1944 Lah. 169, 170).

3. *Municipal Corporation of Rangoon v. Saw Willie* (A. I. R. 1942 Rang. 70, 73); *Madhav Rao v. Vaikunth Kamath* (A. I. R. 1942 Mad. 466, 467-68).

4. *Narsinha Raju v. Brindaban Sahu* (A. I. R. 1943 Mad. 617, 622-23).

5. A. I. R. 1945 F. C. 2.

on the same section of the Act of 1939 upto the point where the actual definitions are commented upon will be found useful in case of necessity. While making use thereof the distinction between an Act and a rule made under it should not however be lost sight of.

The definitions given in clauses (i) to (v) of this rule are simple and self-explanatory. As for the general provision in clause (vi) it is similar to that in S. 2 (15) of the Act of 1947 and S. 2 (16) of that of 1939. The major portion of the comments on them will therefore be found useful for elucidating any point arising out of its wording.

3. *Seasonal finance*:—The purposes, advancing of loans for which shall be “seasonal finance” within the meaning of clause (13) of section 2, shall be:—(i) raising of crops during the ploughing season, or later, ploughing, sowing, harrowing, weeding, harvesting, purchase of seeds and manure; (ii) labour charges; (iii) transport charges; (iv) purchase of fodder; (v) intercultivating; (vi) threshing; (vii) hire or purchase of plough cattle and agricultural implements, (viii) maintenance of the debtor and his dependants and of his cattle and repairs to agricultural implements; and (ix) current expenses of running agricultural machinery, *e. g.* pumps or engines, including fuel charges.

#### COMMENTARY

*Scope of the rule and change in the law*:—A comparison of the definition of the expression “seasonal finance” given in S. 2 (13) and the purposes mentioned in this rule on the one hand with the definition of the expression “financing of crops” given in S. 2 (7) of the old Act and the other purposes mentioned in rule 3 of the old rules shows that the wording of clause (i) has been adopted with a slight variation from S. 2 (7) of the old Act upto the point from where the provision for prescribing other purposes

by a rule begins, and that the purposes mentioned in clauses (iv) to (ix) of this rule are the same as those mentioned in the old rule 3 with very slight variations in the wording of clauses (vi) and (vii).

The changes made while adopting the wording of S. 2 (7) of the old Act for clause (i) are merely the insertion of the conjunction "and" between the words "seed" and "manure" and the elimination of the comma which existed after the word "seeds". These changes were grammatically necessary and make no change in the sense of the clause. That made while adopting the relevant portion of the old rule 3 for the wording of clause (vii) is the insertion of the word "plough" between the preposition "of" and the noun "cattle". This change has the effect of confining the definition of "seasonal finance" so far as the purchase of cattle is concerned to such cattle only as are used for ploughing purposes and for no other purpose such as stock-breeding or dairy-farming. That made in the relevant portion of the old rule 3 for the purpose of clause (viii) is the insertion of the words "the debtor and his dependants and of his" between the preposition "of" and the noun "cattle". This is an important addition enlarging the scope of the loans for seasonal finance so as to bring the purpose of the maintenance of the debtor and his dependants within it. It is a very wise enlargement of its scope because the Review Committee appointed in 1943 had found that owing to the absence of any provision in the Act or the Rules as they then were for the taking of loans by a debtor for the maintenance of himself and his family and for meeting other social needs, those who were parties to proceedings or to unsatisfied awards made by some of the Boards, were being per force driven to take loans at exorbitant rates of interest and on personal security from Pathan money-lenders who relied upon coercive methods for the recovery of their dues and the purpose of the Legislature in passing the Act was being thereby defeated. I would have wished that the Collector having been empowered by rule 15 to fix maximum amounts for the purpose of such loans, even loans for social needs according to the customs prevalent in the communities to which

the debtors belong had been brought within the scope of the loans authorised under S. 54 of the Act.

This rule is exhaustive of the purposes for which loans of this nature can be advanced because the further provision in the old rule 3 beginning with the words "Such other purpose etc." has not been incorporated in the present rule.

*This rule and rules 14 to 16 and forms 10 to 12 :—*This is a rule defining the purposes referred to in clause 13 of S. 2 of the Act. Rules 14 to 16 and Forms Nos. 10 to 12 relate to the same matter, namely loans to be advanced for seasonal finance and matters subsidiary thereto. They will be commented upon at their proper place hereafter.

4. *Applications under sub-section (1) of section 4 and sub-section (1) of section 8 :—*Applications under sub-section (1) of section 4 shall be in Forms Nos. 1 and 2 and applications under sub-section (1) of section 8 shall be in Form No. 3. They shall be presented to the Court during office hours by the applicants personally or shall be sent by registered post addressed to the Court and shall be received by the Civil Judge or by such person as may be authorised by him to receive them.

#### COMMENTARY

*Scope of the rule :—*This rule in the first place provides for the forms in which applications for the adjustment of debts and for recording settlements can be made and secondly, it prescribes how such applications should be filed. It leaves it to the discretion of the applicant concerned whether to present his application personally or to send it by registered post to the address of the Court. In the former case it directs that personal presentation should be made during the office hours of the Court and in the latter that applications sent by registered post should be received either by the Civil Judge concerned personally or by any person authorised by him to do so

on his behalf. Although the word "person" has been used here, it is only a responsible officer of the Court such as the Clerk of the Court or the Nazir of the Court or any senior member of the clerical establishment of the Court who can be so authorised because it is a responsible duty.

*\*Forms Nos. 1 and 2:—*Form No. 1 is so worded as to be capable of being used by a debtor-applicant. It consists of 5 paragraphs besides provisions for stating the address of the Court at the top and the marking of the date of making and the making of the signature of the applicant at the end. Paragraph 1 requires the applicant to state his name, father's name, caste, place of residence, age and occupation. Paragraph 2 requires him to state the amount and other particulars of the debts sought to be adjusted. Paragraph 3 requires a statement of particulars as to his property including debts due to him, divided into three classes, namely:—(a) immovable property; (b) movable property (including cash) and (c) claims due. Paragraph 4 necessitates particulars to be given as to any of the properties mentioned in paragraph 3 that may have been transferred to another person or encumbered with a debt. Lastly, paragraph 5 contains the form of a declaration required to be made by the applicant as to the truth of the particulars given in the preceding paragraphs. In addition to such a declaration there is a form of a verification similar to that to be made below plaints in civil suits and it is intended to be signed and dated separately. Below the verification there is a note for the guidance of the applicant as to what further particulars should be given in the case of there being a debt due under a document in which arrears of interest had been added to the principal amount advanced.

Form No. 2 consisting of 3 paragraphs only is so worded as to be capable of being used by a creditor-applicant. After stating the address of the Court, he has in paragraph 1 to give the same particulars about himself as the debtor has to do, in paragraph 2 he has to give those as to his own claim or claims and in paragraph 3 those about the debtor's property so far as they are known to him,

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*\*Not re-printed. See however the comparative notes at the end hereof.*



divided into three classes, namely :—(a) immovable property; (b) movable property and (c) other income, if any.

This too is intended to be signed and dated and also verified and dated over again like the previous form and has a note similar to the one under that form.

*\*Form No. 3* :—This form is so worded as to be capable of being used either by a debtor or by a creditor. Besides the usual provisions for giving the address of the Court, the date of making and the signature of the applicant and the usual verification clause it has 2 paragraphs. In the first of them the applicant is required to fill in the usual particulars about himself and in the second he has to state particulars about the debt settled and the terms of the settlement agreed to between him and the other party.

5. *Manner of publication of general notice under section 14* :—The general notice under clause (b) of section 14 shall be published by affixing copies of it at the offices of the Court concerned and of the Mamlatdars or Mahalkaris of the talukas or petas concerned. Such notice shall state that the list of debtors, who have made applications for adjustment of debts or against whom applications have been made, will be available for inspection at all reasonable times in the Court.

6. *Form of statement under section 14* :—The statement which a debtor or creditor is required to submit under section 14 shall be in Form No. 4 or 5 as the case may be.

#### COMMENTARY

*Scope of the rules* :—S. 14 of the Act requires the Court on receipt of an application under S. 4 thereof to give a notice to the debtor and to every creditor unless he himself is the applicant requiring him to submit a statement in a prescribed form within one month and also to publish a general notice to that effect. The proviso to the

\* Not re-printed. See however the comparative notes at the end hereof.

section empowers the Court to extend the said period if good and sufficient cause for not filing the statement in time is shown to it. Rule 5 prescribes the manner of publication of the general notice. It is that copies of the notice should be affixed at the offices of the Court concerned and the principal revenue officers of the territorial units, whether a taluka or a peta, in which the debtor and the creditors concerned may be residing. Besides prescribing the said method it directs that such notice shall contain a statement that the list of debtors who have made applications under S. 4 or against whom such applications have been made will be available for inspection at all reasonable hours at the office of the Court. Rule 6 prescribes the forms which are to be used by the persons served with notices.

\**Forms Nos. 4 and 5* :—Form No. 4 has been so worded as to be capable of being used by a debtor and Form No. 5 so worded as to be capable of being used by a creditor. The former has two paragraphs, the first of which requires a statement similar to the one in Form No. 1 as to the debts due by a debtor and the second similar to the one in the same form as to his property including claims, and portions of his property transferred or encumbered. Form No. 5 similarly resembles Form No. 2 so far as it requires particulars as to creditor's claims against and the property of the debtor so far as they are known to the creditor. Both the forms are required to be signed and verified and contain the same note at the end as do Forms No. 1 and 2.

7. *Manner of determining the value of debtor's property under sub-section (1) of section 29.*—(i) For the purposes of sub-section (1) of section 29, the value of the debtor's movable and immovable property shall be determined by the Court in the manner specified in sub-rules (ii) and (iii).

(ii) *Immovable property* :—The Court shall determine the value of any immovable property by taking into consideration—(a) the *bona fide* sales and leases of the property in question during the preceding twelve

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\* Not reprinted. See however the comparative notes at the end hereof.

years; (b) the *bona fide* sales and leases of similar properties in the neighbourhood during the preceding twelve years; and (c) the valuation of the property in question made by the Land Valuation Officers appointed by Government in this behalf.

(iii) *Movable property* :—The Court shall determine the value of movable property by taking into consideration the valuation of the property in question made by the Land Valuation Officers appointed by Government in this behalf and also by questioning the parties concerned and by making such other inquiries as it may think fit.

8. *Manner of determining the market value of debtor's property under sub-section (4) of section 29* :—For the purposes of sub-section (4) of section 29, the market value of the debtor's lands, which under any law for the time being in force, are not transferable or alienable except with the previous sanction of the Collector or the Provincial Government, shall be determined by the Court by taking into consideration—(a) the *bona fide* sales and leases of the lands in question during the preceding 12 years, if any, and (b) the *bona fide* sales and leases of similar lands in the neighbourhood during the preceding 12 years after ascertaining the valuation of the lands in question from the Mamlatdar of the taluka or the Mahalkari of the peta concerned.

#### COMMENTARY

*Scope of the rules* :—It may be recalled that S. 29 of the Act has been sub-divided into 4 sub-sections. The first thereof makes a general provision as to the determination of the value of the debtor's property of all sorts in the prescribed manner, *i. e.* to say, in the

manner which may be prescribed by a rule or the rules which may be made in that behalf. Rule 7 prescribes that manner. That rule is sub divided into 3 sub-rules. The first thereof makes again a general provision for the determination of the said value as specified in the next two sub-rules. The second lays down the method to be adopted for the evaluation of immovable property and the third that to be adopted with respect to the evaluation of movable property. These sub-rules are simple and therefore need no explanation.

The fourth sub-section of S. 29 directs the Court to follow the manner that may be prescribed for the evaluation of the lands which are not transferrable or alienable without the sanction of the Collector or the Provincial Government. Rule 8 prescribes that manner.

When the two rules are compared it appears that the method of ascertaining the market value of the latter class of lands is the same as that of determining the value of the other immovable property of the debtor with this difference only that (a) whereas in the former case the Court has first to ascertain the valuation of the lands in question from the Mamlatdar of the taluka or the Mahalkari of the peta in which they are situated before taking into consideration the sales and leases of similar lands in the neighbourhood during the preceding 12 years, in the latter case it can take such documents into consideration at any time and (b) whereas the Court has to consider the view of the revenue department officer in the former case it has to consider that of the Land Valuation Officer for the area in the latter. The duty to consider the sales and leases of the property in question during the preceding 12 years is common to both.

9. *Forms of award*:—(i) The award under section 32 shall be in Form No. 6 and the award under sub-section (2) of section 33 shall be in Form No. 7.

(ii) The Court shall send a copy of the award passed under sub-section (2) of section 33 to the Primary Land Mortgage Bank concerned or the Bombay Provincial Co-operative Land Mortgage Bank Ltd., as the case may be.

## COMMENTARY

*Scope of the rule* :—The Act provides for making awards under four sections namely S. 8 (4), 9, 32 and 33 (2). The first thereof is an award based on a settlement made without any of the parties coming to the Court before it is effected, the second on one made during the pendency of a proceeding for the adjustment of debts, the third and fourth are both made after accounts are made up under S. 22 and scaling down of debts, if necessary, is made under S. 31 but as between them *inter se* there is this difference that awards are made under S. 32 in all the contested cases except those which fall under S. 33 and the latter are those in which the amounts of the debts as scaled down exceed half the value of the immovable properties of the debtors concerned. This rule provides for the making of the awards of the two latter sorts only and prescribes the appropriate forms therefor.

\**Form No. 6* :—This form is the same as Form No. 9 prescribed by the old rule 29 with only the formal changes required by those in the numbers of the relevant sections and the transfer of jurisdiction under the Act from the Board to the Court. It is in 3 paragraphs and has two Schedules, A and B, appended thereto. The note at the end contains instructions as to the particulars to be mentioned in the Schedules. For any further explanation of the form, if necessary, see pp. 281-83 of the First Edition of the Commentary on the Act of 1939.

*Form No. 7* :—This is an adaptation of Form No. 10 prescribed by the old rule 29 with such variations as the amendment made in S. 55 of the old Act while re-enacting it as S. 33 of this Act required. The paragraphs therein have not been numbered. However the first three sentences constitute paragraph 1 of the preamble and the second contains the specific directions to be given in such cases. These directions are contained in its four sub-paragraphs (a) to (d). (a) thereof contains a direction to the bank concerned to pay the amount in cash or in government-guaranteed bonds as desired

by the creditors, (b) one to the debtor to pay the amount in certain instalments with interest at a prescribed rate to the bank concerned and (c) that to pay court-fee to the party held liable for it while (d) contains the form of a declaration of a charge for the said amount on all the immovable property of the debtor as described in col. 4 of the annexed Schedule.

The old Form No. 10 had two Schedules, the second of which related to the property charged with the debt due to the bank. The only Schedule to this form is the said second Schedule simplified. Besides the usual remark-column at the end it has 4 columns I fail to understand why the serial numbers, names and addresses of the original creditors and the amounts payable to them are required to be stated individually though they are to be paid off and the charge is to be created in favour of the bank making payment to them.

NOTE.—This rule does not like the old rule 29 (2) provide for making use of Form No. 6 for the awards to be made under SS. 8 (4) and 9.

10. *Application under clause i, sub-section (3) of section 38:—* Application under clause (i) of sub-section (3) of section 38 shall be in Form No. 8.

#### COMMENTARY

*Scope of the rule:—*There is no rule among the old rules to which this can be said to correspond. That is so because whereas the old S. 63 contained a general provision for the execution of all registered awards as decrees of the Court S. 38 (3) contains a provision only for the recovery of an instalment due under an award which has fallen in arrears.

*From No. 8:—*This form is so worded as to be consistent with the latter provision and only requires the name etc. of the applicant, the number and date of the award, the name of the debtor and the month and year in which the instalment had become due to be stated.

11. *Procedure when a debtor's property is ordered to be sold under section 41 or sub-section (2) of section 47:—*

(i) Every sale of property, whether moveable or immoveable, under section 41 or sub-section (2) of section 47 shall be held by an officer of the Court in accordance with the procedure laid down for the sale of such property under the *Code*.

(ii) A certificate in Form No. 9 shall be issued to the purchaser of property by the officer conducting the sale under this rule.

### COMMENTARY

*Scope of the rule* :—This rule prescribes the manner of conducting the sale of a debtor's property, wholly or partly, ordered by the Court under S. 41 relating to an order for an interim sale or under S. 47 (2) relating to an order for the sale of the property of a debtor after he is adjudicated an insolvent. The *Code* here means the *Code of Civil Procedure, 1908* as defined in R. 2 (ii). Under the corresponding old R. 30 it was the Collector on whom the power to conduct an interim sale under S. 66 of the old Act had been conferred expressly and that under S. 68 (3) of that Act had been conferred upon him impliedly. By this rule it is conferred upon an officer of the Court who is usually the Nazir.

*Form No. 9* :—This form of a certificate of sale is the same as the old Form No. 11 with the omission of the word *Collector* and the substitution of the words and figures *41 or sub-section (2) of section 47* for the figure *66* and of the figure *1947* for the figure *1909*. It is intended to be signed by the officer conducting the sale instead of by the Collector agreeably to the provision in the rule.

**12. Recovery of court-fees** :—The court-fees payable under sub-section (1) of section 44 shall be recovered as arrears of land revenue.

### COMMENTARY

*Scope of the rule* :—This is a new rule providing for the recovery of the court-fees payable as per the provisions of S. 44 (1) as arrears

of land revenue, which have priority over the other debts, if any, due by the person liable to pay them.

13. *Procedure in Code to be followed generally* :—In respect of any matter for which no provision is made in the Act or these rules, the procedure laid down in the *Code* shall, so far as may be, be followed by the Court in the proceedings before it.

#### COMMENTARY

*Scope of the rule* :—This rule takes the place of R. 35 of the old rules and is in the same terms except that the words *the Act or these* have been substituted for the article *the* occurring between the words *in* and *rules* and the word *Court* has been substituted for the word *Board*. It is clear and therefore needs no explanation.

14. *Conditions subject to which authorised persons may advance loans* :—The authority under section 54 to any person to advance loans to debtors who are parties to any proceedings under the Act or in respect of whose debts an adjustment has been made under the Act (hereinafter referred to in this rule as the authorised person), shall be in Form No 10. It shall not be granted except on the following conditions :—

(i) *Purposes for which advances may be made and maximum limits of such advances* :—The authorised person shall not advance loans to any debtor except for the purpose of seasonal finance not exceeding the maximum limits which the Collector has fixed in this behalf under rule 15.

The authorised person shall not knowingly advance any loan to any debtor who had previously taken a loan



from another authorised person unless such previous loan has been fully paid or unless he (the authorised person) agrees to discharge the liability of the debtor in respect of such previous loan.

(ii) *Authorised person not to withhold permission for sale of crops or produce* :—The authorised person shall not unreasonably withhold permission required by a debtor under sub-section (1) of section 53 for sale of the standing crops or the produce of his land and if the authorised person himself buys the crops or produce he shall pay the debtor the price thereof at the market rate.

(iii) *Duty of authorised person to maintain and furnish accounts* :—(a) The authorised person shall keep regularly in Form No. 11 a separate account of each loan advanced to a debtor :

Provided that where the loans to any debtor are advanced on a current account, the authorised person may keep one account of all transactions relating to such loans.

*Explanation* :—For the purposes of this clause the term “current account” includes, in the case of banks, accounts relating to overdrafts, cash credits and promote accounts, which are maintained in the form of current accounts.

(b) The authorised person shall, within one month after the expiry of every year supply every debtor a full and correct statement of accounts signed by him or his agent. Such statement of accounts shall show all transactions entered into during the year and the balance outstanding on account of each loan on such date as

Government may prescribe either generally or for a particular area and shall contain particulars as in Form No. 12 :

Provided that where the loans are advanced on a current account, it shall be sufficient to furnish particulars of the balance due on the whole of such account on the prescribed date. In the case of banks, the requirements of this clause shall be deemed to have been complied with if a full statement of accounts has been supplied to the debtor by means of a pass-book or otherwise from time to time throughout the year and intimation is given within one month after the expiry of the year of the amount of the balance remaining due on the prescribed date.

(c) The statement of accounts shall be furnished to the debtor by registered post and an acknowledgment obtained thereof at the cost of the authorised person.

(iv) *Rate and calculation of interest* :—(a) The authorised person shall not charge or recover interest at a rate higher than the rate notified by Government under rule 16.

(b) If any repayment is made in respect of a loan interest on such loan shall be calculated up to the date of such repayment; and if the loan or any part of it is outstanding, interest shall thereafter be calculated only on the balance of the principal still outstanding.

(v) *Inspection of accounts to be allowed* :—The authorised person, unless specially exempted by Government, shall allow such officer as may be appointed in this behalf by Government to inspect the accounts maintained by him.

(vi) *Penalty for non-compliance with conditions mentioned in this rule*:—Government may in its discretion cancel the authority granted by it for breach of any of the foregoing conditions or for any other reason.

15. *Collector to fix maximum limits up to which advance may be made*:—The Collector shall, by notification in the *Official Gazette*, fix maximum limits up to which persons authorised under section 54 may advance loans to debtors, who are parties to any proceedings under the Act or in respect of whose debts an adjustment has been made under the Act, for seasonal finance once a year. Such limits shall come into force from the 1st day of the month next to that in which the notification is published by the Collector and shall remain in force till the end of the month in which a fresh notification is published by the Collector in the next year. Such limits may be fixed separately for different crops and for different areas, having regard to the seasons and nature and productivity of crops.

16. *Government to fix maximum rates of interest*:—Government shall, from time to time, by notification in the *Official Gazette*, fix a rate of interest not exceeding six per cent. per annum, at which loans for seasonal finance may be advanced by persons authorised under section 54.

### COMMENTARY

*Scope of the rules and changes in practice*:—Rule 14 prescribes the conditions subject to which the authority to advance loans for seasonal finance can be granted, Rule 15 authorises the Collector to fix the maximum limits up to which they can be advanced in each year which may vary with crops and areas and Rule 16 authorises Government to prescribe the maximum rate of interest, not

exceeding 6 per cent. These rules are the same as Rules 38 to 40 of the old rules with certain formal consequential changes and some material changes. Those of the former class in rule 14 are:—(1) the substitution of the figure 54 for the figure 78 after the word *section* and of the figure 10 for the figure 22 after the words *Form No.* in the main provision in rule 14; (2) that of the figure 15 for the figure 39 after the word *rule* in clause (i) therein; (3) that of the figure 53 for the figure 77 in clause (ii) therein; (4) that of the figure 11 for the figure 23 after the words *Form No.* in clause (iii) (a) therein; (5) that of the figure 12 for the figure 24 after the words *Form No.* in clause (iii) (b) therein and (6) that of the figure 16 for the figure 40 after the word *rule* in clause (iv) therein. A change of the same class in rule 15 is the substitution of the figure 54 for the figure 78 after the word *section*. Lastly, one of the same class in rule 16 is the substitution of the figure 54 for the figure 78 after the word *section*.

The material change in rule 14 as compared with the old rule 38 is the substitution of the words *seasonal finance* for the words *financing of crops* occurring after the words *except for the purpose of* in clause (i) therein. Those of the same class in rule 15 as compared with the old rule 39 are:—(1) the words *in the month of March each year*, and the comma which existed in the latter between the word *shall* with a comma, and the words *by notification etc.* have been omitted and (2) the words *financing of crops during the period between 1st April of that year and 31st March of the following year* which existed at the end of the first sentence have been substituted by the words *seasonal finance once a year*. Those of the same class in rule 16 which takes the place of the old rule 40 are:—(1) the substitution of the word *six* for the word *twelve* which occurred after the words *not exceeding* and before the words *per cent.* and (2) that of the words *seasonal finance* for the words *financing of crops* which occurred after the word *for* and before the words *may be advanced*.

*These rules and rule 3*:—These rules relate to the same subject as Rule 3 which defines the purposes for which loans can be advanced under S. 54.

*Legal effects of the material changes:*—The legal effects of the material changes are:—(1) that no authority will henceforward be granted under S. 54 read with S. 2 (13) and rule 14 for advancing loans for the financing of crops as defined in S. 2 (7) of the old Act but it will be granted for advancing them only by way of seasonal finance as defined in S. 2 (13); (2) the maximum limits fixed by the Collector by a notification in the *Gazette* under rule 15 will come into force from the first day of the month next to that in which the notification is published by the Collector and will remain in force till the end of the month in which a fresh one is published by him in the next year and he will have sufficient discretion to choose the dates of the publication thereof in the two calendar years concerned and (3) the maximum rate of interest to be fixed by Government from time to time under rule 16 will be six instead of twelve per cent. per annum.

*\*Forms Nos. 10, 11 and 12:*—Form No. 10 is the principal form prescribed by the main provision in rule 14 for the nature of the authority to be granted under S. 54. Forms Nos. 11 and 12 are subsidiary thereto, for, No. 11 which is prescribed by clause (iii) (a) in that rule is the form in which the authorised person is required by the authority to keep an account of his dealings and No. 12 prescribed by clause (iii) (b) in that rule is that in which he is required to furnish a statement of his dealings with him to each debtor every year within one month of the expiry of the year of the account.

These forms are the same as Forms No. 22 to 24 prescribed by the old rule 38 with such variations as were required by the changes made in that rule while re-framing it as Rule 14 herein.

*S. 54 of the Act, Rules 14 to 16 and Bom. Act XXXI of 1947:*—S. 54 of Bom. Act XXVIII of 1947 and Rules 14 to 16 of the rules made thereunder introduce, so far as the persons advancing loans to debtors who are parties to proceedings under that Act or against whom awards have been made under it are concerned the system of the licensing and registration of money-lenders and

impose on them the duty of keeping and rendering accounts which are provided for in SS. 6 to 9, 18 and 19 of the *Bombay Money-lenders Act 1946\** (Bom. Act XXXI of 1947\*). That Act is likely to be put into operation throughout the Province at any time by a Government notification published in the *Official Gazette*. When put into operation it will serve to prevent the unlawful practices now indulged in by some unscrupulous money-lenders and thus ensure the permanence of the relief granted under the provisions of this Act. S. 38 of that Act itself leaves unaffected any of the provisions of Bom. Act XXVIII of 1939 and does not permit any Court to "entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act." This saving section must, according to the provisions of S. 9 of the *Bombay General Clauses Act, 1904* now be construed as referring to Bom. Act XXVIII of 1947 which repeals the said Act of 1939.

### FORMS PRESCRIBED BY THE RULES.

*Introductory Remarks* :—A reference to the Introductory Remarks made under the Preamble to the preceding rules will show that the total number of forms prescribed thereby is 12 only. That to the *Comparative Table* comprised in the *Bird's eye-view of the Rules and Forms* given thereafter will further show that the said forms have been prescribed by the following rules, namely :—R. 4-F's. 1-3, R's. 5-6-F's. 4-5, R. 9-F's. 6-7, R. 10-F. 8, R. 11-F. 9, R's. 3 and 14-16, F's. 10-12.

*Comparative study of the Forms* :—A comparison of the said forms with those prescribed by the old rules shows that whereas out of the latter Nos. 1-3, 9, 10, and 22-24 have been prescribed over again with suitable modifications, Nos. 5, 6, 7, 8, 12 and 13-21

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\*This is so in the authorised text of the Act published at pp. 296-310 of Pt. IV of the *Official Gazette* dated 31st May 1947 after having recieved the assent of the Governor-General on 27th May 1947.

have been dropped altogether and Nos. 4-5 and 8 of the present forms are entirely new. Owing to the necessity to economise the use of paper, I propose to re-print here only those forms which are entirely new and those in which the modifications are so far reaching that no adequate idea thereof can be formed from such comparative notes as I make with respect to the remaining forms.\*

*Form No. 1 (Rule 4):*—This form is the same as the old Form No. 1 with only the following formal changes, namely:—(1) It bears the address of “The Court of the Civil Judge <sup>Senior</sup><sub>Junior</sub> Division” instead of that at “The Debt Adjustment Board, taluka. .... district.....”. (2) In paragraph 1 the reference is to “S. 4 (1) of the *B. A. D. R. Act, 1947*” instead of to “S. 17 (1) of the *B. A. D. R. Act, 1939*”; (3) The words “as required by section 22 (1) (a) to (d)” which existed between the word “particulars” and the words “of all debts due from me” have been dropped.

The remaining contents of this form are the same as those of the old one.

*Form No. 2 (Rule 4):*—This form is the same as the old Form No. 2 with the same formal changes as are mentioned in the case of Form No. 1.

*Form No. 3 (Rule 4):*—This form is the same as the old Form No. 3 with the same kind of changes in the address and references to the section and sub-sections and the Act as are noted with reference to Form No. 1, the section and sub-section substituted here being 8 (1), and 8 (3) of the *B. A. D. R. Act, 1947*.

*Forms No. 4 and 5 (Rule 6):*—The old rules did not prescribe any form of the statements to be filed by the debtor and the creditor or creditors in response to a notice served under S. 31 of the old

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\*All these old forms will be found printed at pp. 298-325 of the first edition of the Commentary on Bom. Act XXVIII of 1939.

Act. These rules however prescribe Forms Nos. 4 and 5 of the statements to be filed by them in response to a notice served under the corresponding section 14 of the Act of 1947. These forms are the same as Forms Nos. 1 and 2 with the following formal changes made therein :—

*Form No. 4* :—(1) The address of the Court and the first paragraph are dropped; (2) The second paragraph has the following introductory sentence in place of the similar sentence in Form No. 1, namely:—1. “Amount and Particulars to be submitted by a debtor under section 14 of the *Bombay Agricultural Debtors Relief Act, 1947* including those mentioned in section 3 of the Act.” (3) The introductory sentence in paragraph 2 which takes the place of paragraph 3 in Form No. 1 is:— “Particulars of debtor’s property including claims due to the debtor.” (4) The introductory sentence of paragraph 3 which takes the place of paragraph 4 in Form No. 1 is the same with the concluding words “are as follows” dropped. The substantial portion of the form is the same as that of Form No. 1.

*Form No. 5* :—This form is the same as Form No. 2 with the same kind of unimportant changes in the wording of the initial sentences but the particulars required to be supplied are the same in both.

*Form No. 6* [Rule 9 (i)] :—This form is the same as the old Form No. 9 with only the formal changes of the kind noted in connection with Form No. 1. Thus “section 32” takes the place of “section 54” the year “1947” that of the year “1939” after the name of the Act and the word “Court” that of the word “Board” in the heading. (2) The year after the name of the Act in the first paragraph is changed from “1939” to “1947”; (3) In the second paragraph “section 54” has been changed into “section 32”; (4) In the third paragraph “section 28 (2)” takes the place of “section 49”.

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## FORM No. 7.

[See Rule 9 (i).]

*Award under section 33 (2) of the Bombay Agricultural Debtors Relief Act, 1947.*

Proceeding No. \_\_\_\_\_

of 194 \_\_\_\_ .

Award of Court.....

Whereas on an application made under the *Bombay Agricultural Debtors Relief Act, 1947*, for the adjustment of debts of resident of \_\_\_\_\_ (hereinafter referred to as the said debtor), this Court has determined under the provisions of the said Act the total amount of his debt as scaled down under section 31 of the said Act;

And whereas the creditor(s) mentioned in the Schedule hereto annexed has/have all agreed to the further scaling down of the debts under sub-section (1) of section 33 of the said Act;

And whereas the said debtor has not paid the amount of the debt as finally scaled down within the period fixed by the Court and has not produced the creditor's receipt for the payment thereof;

It is hereby directed under sub-section (2) of section 33 of the said Act that—

(a) the \*.....Primary Land Mortgage Bank  
†.....Bombay Provincial Co-operative Land Mortgage Bank, Ltd.

at ‡.....  
shall pay the said creditor(s) in cash the amount of debt as finally scaled down under section 31 or section 33 (1), as the case may be, or if the creditor(s) so desires/desire, issue to him/them bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, Ltd. and

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\* Name of Bank, if any.

† To be retained only if there is no Primary Land Mortgage Bank in the area.

‡ Name of place where Bank is situated.

guaranteed by the Provincial Government, in full satisfaction of all the debts due to him/them from the said debtor;

(b) The said debtor shall pay to the said Bank a sum of Rs. with interest at the rate notified by Government from time to time in that behalf, under sub-section (3) of section 33 of the said Act from the date on which the said Bank pays the creditor(s) the amount of debt due to him/them or the date on which the bond(s) is/are issued, as the case may be, till the amount of the debt is paid in full by \$.....annual instalments of Rs. each, the first instalment being payable on

(c) Rs. shall be paid as court-fee by and Rs. shall be paid as costs by

to , and

(d) all the immovable property of the said debtor, described in column 4 of the Schedule hereto is hereby charged in favour of the said Bank until all the instalments mentioned in paragraph (b) are fully paid up.

Seal.

Civil Judge, <sup>Senior</sup>/<sub>Junior</sub> Division,

### *Schedule.*

1	2	3	4	5
Serial No.	Name and address of the creditor.	Amount of debt as finally determined by the Court to be payable to each creditor.	Description and full particulars of all the immovable property of the debtor.	Remarks.

FORM No. 8.

(See Rule 10.)

To,

The Court of Civil Judge, Senior Division,  
Junior

.....

Under clause (i) of sub-section (3) of section 38 of the *Bombay Agricultural Debtors Relief Act, 1947*, I.....son  
of..... caste.....resident of.....  
taluka.....hereby apply for execution of award No.....  
dated.....passed by the Court as the debtor.....  
.....has made default in the payment of the instalment  
due to be paid in the month of.....year.....

Dated the.....194 .

Signature of the Creditor.

FORM No. 9.

[See. Rule 11 (ii).]

*Form of Certificate of Sale.*

This is to certify that ..... has been declared  
the purchaser for Rs. .... at a sale by public auction on the  
day of ..... 194  
of ..... in sale conducted by the ..... in pursuance  
of section 41 or sub-section (2) of section 47 of the *Bombay Agricultural Debtors Relief Act, 1947*.

Officer conducting the sale.

*Form No. 10 (Rule 14):*—This form is the same as the old Form No. 22 with the following formal changes only, namely:—(1) The heading is the simple one:—"Authority to advance loans to debtors". (2) Paragraph 1 refers to S. 54 (1) of Bom. XXVIII of 1947 and the issuing authority is said to be "the Government of Bombay" instead of "the Collector" under a delegated authority. (3) The wording of paragraphs 2 and 3 remains the same. (4) In paragraph 4 (a) the purpose of advancing the loan is said in condition (i) to be "seasonal finance" only and the rule referred to is No. 15; (b) the reference in condition (ii) is to S. 53 (1); (c) the forms referred to in condition (iii) (a) and (b) are Nos. 11 and 12 respectively; (d) the rule referred to in condition (iv) is No. 16. (5) The official designation of the officer issuing the authority is the "Secretary to Government" doing so "by order of the Governor of Bombay."

*Form No. 11 (Rule 14 and Form No. 10):*—This form is word to word the same as the old Form No. 23.

*Form No. 12 (Rule 14 and Form No. 10):*—This form is word to word the same as the old Form No. 24.

## APPENDIX II


### GOVERNMENT NOTIFICATIONS ISSUED UNDER THIS ACT

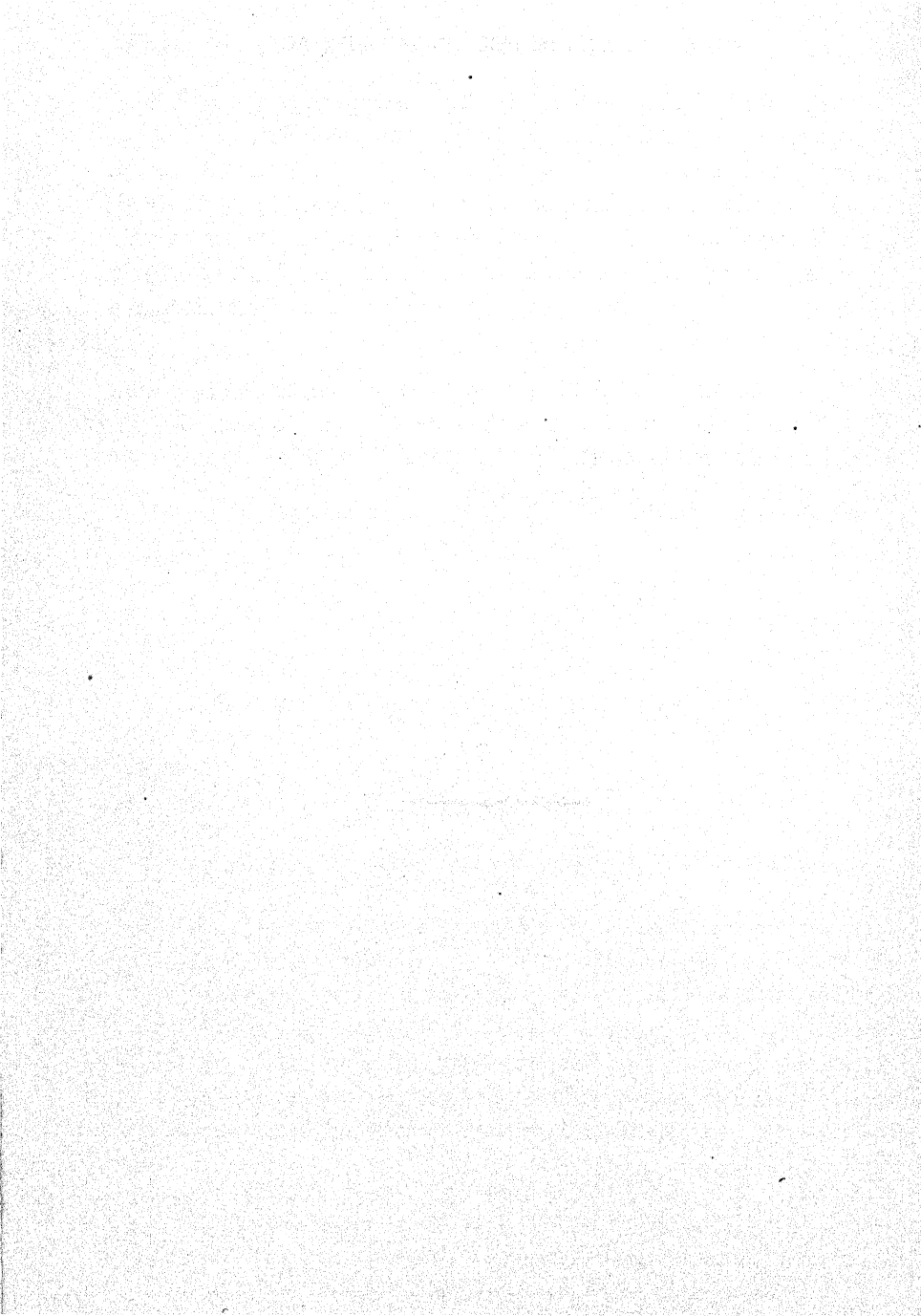
*No. 4460/45 dated 23rd June, 1947* issued under S. 47 (2) of the Act and published at p. 368 of Pt. IVB of the *B. G. G., Extraordinary* of the same date notifies that 4 acres of betel-nut and spice garden lands or 6 acres of irrigated, rice or cocoanut lands or 18 acres of dry land or any land assessed at Rs. 30, whichever is greater in area, is the minimum necessary for the maintenance of the debtor and his dependants.

*No. 4684/45 dated 12th July 1947* issued under S. 55 of the Act and published at pp. 418-39 of the same Part of the said *Gazette* of the same date published the draft of the Rules framed under the said section and the forms prescribed thereby.

No. 2531/45 dated 14th July 1947 issued under S. 32 (2) (vi) of the Act and published at p. 452 of the same Part of the said *Gazette* dated 17th July 1947 notifies that 6 per cent. per annum is fixed as the rate of interest for the Co-operative year 1947-48, i. e. from 1st July 1947 to 30th June 1948, payable by the debtor in respect of whose debt an award under S. 33 (2) of the Act has been passed by a Court, to the Bombay Provincial Land Mortgage Bank in the local area concerned.

No. 4684/45 dated 19th July 1947 issued under S. 55 of the Act and published at pp. 461-82 of the same Part of the said *Gazette* of the same date published finally the Rules framed under the said section and the forms prescribed thereby.



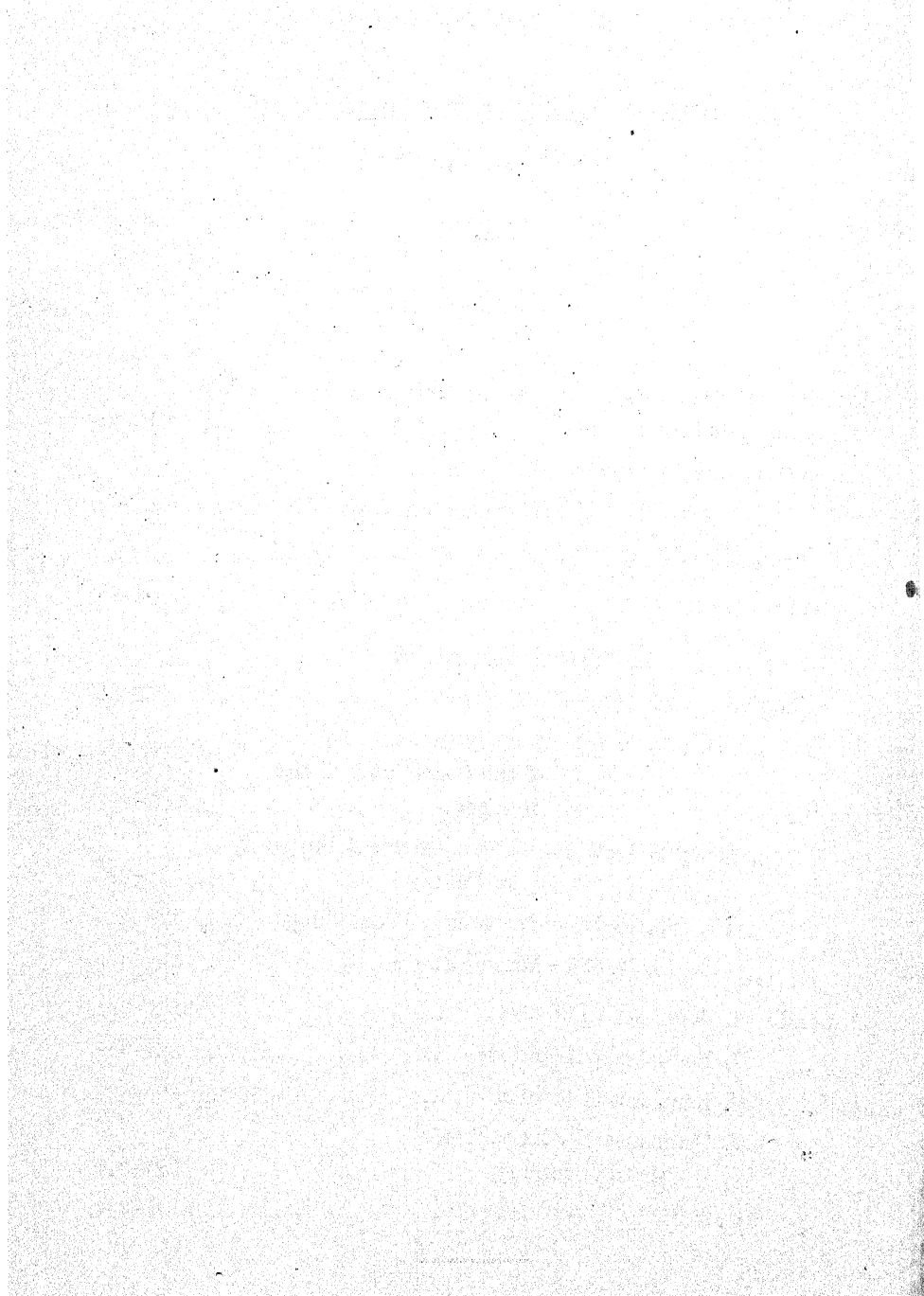


THE BOMBAY AGRICULTURAL DEBTORS RELIEF  
LEGISLATION, 1939-47

## PART II

*Previous Legislation*

INTRODUCTION TO BOM. ACT XXVIII OF 1939 as amended upto 1946	... ..	pp.	1-74.
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## INTRODUCTION.

I. The Act, and its extent and commencement: II. Object in passing it: III. Reasons for passing it: IV. Part played by the Congress Government in it: V. Remedy provided by the Act: VI. Persons to whom the remedy is available: VII. Time-limit for availing oneself of the remedy: VIII. Peculiar nature of the remedy: IX. Change in law effected by this Act: X. Similar legislation in other provinces: XI General remarks on the Provincial debt laws: XII. Redeeming features of the Bombay debt legislation: Schedule referred to at the end of Section XI hereof.

### I

The *Bombay Agricultural Debtors Relief Act, 1939* was the 28th Act passed in 1939 by the Legislature of the Province of Bombay as re-constituted under the *Government of India Act, 1935*. It received on 19th January 1940 the assent of the Governor General, for which it seems to have been reserved by the Governor because it was absolutely necessary to do so according to S. 107 (2) thereof as it sought to repeal the *Dekkhan Agriculturists Relief Act, 1879*, an Act passed by the Governor General, and was published for the first time at pp. 2 to 44 of the issue of the *Bombay Government Gazette*, Part IV, dated 30th January 1940. No part of it had however commenced to operate till 29th March 1941 because S. 1 (3) thereof as it originally stood had left it to the Provincial Government to appoint and notify in the said *Gazette* a date for that purpose and that Government had not appointed and notified any date for its operation till then. On the said date too it did not issue and publish a notification in the *Official Gazette* but published the *Bombay Agricultural Debtors Relief (Amendment) Act, 1941*, which is Act VI of 1941 and which substituted quite another subsection (3) of section 1. By virtue of that substitution the necessity for appointing and notifying a date for the operation of the Act ceased to exist, SS. 1, 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33 (2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82 and 83 came into force at once in the whole province and the Provincial Government was empowered to direct, by a notification in the *Official Gazette*, that

all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions have been extended by S. 1 (2) on such date as may be specified in the notification. By the amended sub-section (2) of that section the 26 sections above-enumerated were extended to the whole of the Province of Bombay and the Provincial Government was empowered to extend all or any of the remaining provisions of the Act to such area other than the City of Bombay as may be specified in the notification. The combined effect of the amendments made in the two sub-sections therefore was that the said 26 sections came into force in the whole of the province and that the Provincial Government got the powers to extend and to put into force by a notification in the *Official Gazette* all or any of the remaining 60 sections in any select areas forming part of the whole province with the exception of the City of Bombay. It is remarkable that S. 1 (2) as it originally stood, extended, the sections of the Act other than the six mentioned therein, to *the whole of the Province except the Town and Island of Bombay* and therefore under S. 1 (3) the Provincial Government had power to put them into force in the province to the exclusion of the area known as *the town and island of Bombay*. By the amended S. 1 (2) the number of sections extending to the whole province was increased from six to twenty-six but it did not like the original provision extend the remaining provisions in a body to any specific parts of the province but only empowered the Provincial Government to extend by a notification all or any of them to any *area or areas* forming part of *the Province of Bombay other than the City of Bombay*. Secondly, it is worth taking note of, that S. 4 under which the Provincial Government had power to establish a Debt Adjustment Board was not one of the twenty-six sections which were extended to the whole province and put into operation at once and that therefore the full implication of the extent and commencement of the operation cannot be ascertained until a notification defining all the areas of the extent and operation of all or any of the remaining provisions and establishing Boards for certain areas or for certain classes of debtors in any areas appears in the *Official Gazette*.<sup>1</sup> This much however is certain that no Board can

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<sup>1</sup>\*The numerous notifications issued so far with reference to this matter and published in the *Official Gazette* will be found mentioned with full particulars in the Appendix to this Introduction.

and would be appointed for the *City of Bombay*. However under the Act as it stood after the amendment in 1941 persons who answered to the description of a debtor as given in S. 2 (6) read with S. 2 (5), (8) and (12) to (14) and S. 20 of the Act were, even though residing in any area to which the remaining provisions of the Act were not extended and in which they were not put into operation, entitled to call for information from the opposite parties under S. 19, to file applications under SS. 17 and 23 before competent Boards established for the areas in which they had agricultural lands or for any class of debtors to which they belonged, the civil courts in such excluded areas including those in the *City of Bombay* were also required to transfer pending suits, applications for execution and incidental proceedings to such Boards under S. 37, the claims cognizable by such Boards though they may be against persons residing in the excluded areas were liable to be held to be void if the conditions laid down in S. 32 were fulfilled, the persons residing and properties situated in such areas were subject to the jurisdiction of such Boards if the persons had dealings with such debtors and the properties once belonged to them as SS. 7, 31, 33 (2), 34, 45 and 49 were extended to the whole province, such Boards had jurisdiction to issue notices under S. 47 and call for replies, any amount in excess of that held payable by a Board was not recoverable owing to the extension of S. 53 to the whole province, alienations of and encumbrances on properties situated in such areas were liable to be held void if falling within the scope of S. 65, the Boards had power to order the sale under S. 66 of a part of a property even though situated in such area, if found necessary, the decrees made on awards by competent Boards were executable as decrees of civil courts within such areas by virtue of S. 63, the civil courts in those areas were debarred from entertaining suits and proceedings falling within the purview of S. 73, the Boards were competent to issue certificates when necessary and the civil courts in the excluded areas were required to take them into consideration under S. 76, the debtors against whom award-decrees may have been made were required to conform to the provisions of S. 77 in the matter of alienation of their standing crops even in fields situated in the excluded areas, persons committing any of the offences mentioned in S. 82 were punishable whether they did or did not reside in the areas to which the remaining provisions of the Act were

extended and in which they were put into operation and lastly, the Provincial Government was competent to frame rules under S. 83 relating to the operation in the excluded areas of the sections extended to and put into operation in the whole province.

Several major and minor amendments were further made in the Act by Bombay Act VIII of 1945 which came into operation on 21st April 1945 and SS. 54 and 55 were further amended by Bom. Act II 1946. Their nature and effect will be considered in the next section.

## II

The object of the Legislature of this province in passing this enactment, had been explained by the then Finance Minister of the Government of Bombay in the *Statement of Objects and Reasons* which accompanied Bill No. XIII of 1939, which with several important modifications has become this Act XXVIII of 1939. It appears also from the short title given to it by the Legislature by S. 1 (1) thereof for the purpose of convenient reference and also from its full title and preamble. It is "to provide for the relief of agricultural debtors in the Province of Bombay". The preamble also refers to "certain other purposes specified herein", which the Legislature had in view in passing this Act. They appear to be such as may be subsidiary to the main purpose above-mentioned and also such as may be necessary to give a character of finality to the results achieved and such as to repeal existing enactments so far as they may have been rendered superfluous such as the *Bombay Small Holders Relief Act, 1938* or so far as they become inconsistent with the policy adopted in this Act as to the method of granting statutory relief to the class of debtors which has been the special object of the attention of the Legislature for a long time past.

As stated above this Act was amended by Bombay Act VI of 1941 even before it was put into operation anywhere. The amendments made thereby were merely such as were necessary in order to put it into operation as an experimental measure in a few selected areas. After it was tried sufficiently long in the areas mentioned in the Appendix, its working was reviewed by a Committee, of which this author was the Judicial Member, appointed by the Provincial Government in August 1943. Such of the recommendations made by the Committee as were approved by that Government were embodied in a Draft-Bill which was published in the *Bombay Government Gazette*, Part V under the Revenue Department Notification

No. 9402/39, dated 2nd February 1945. Objections and suggestions with respect thereto were invited upto the 28th idem. It was then re-considered in the light of such of them as had been received and has now been promulgated as Bombay Act VIII of 1945 after duly obtaining the sanction of H. E. the Governor General of India. It had also been announced that the Provincial Government was going to establish 42 additional Debt Adjustment Boards serving in all 92 Talukas and intended to extend the Act to the whole of the remaining portion of the Province in the Post-War period.

The amendments made thereby fall into three broad divisions as shown in the following table :—

Corrections in sections or parts thereof of errors which impeded the smooth working of the Act.	Necessary alterations in the relevant dates in sections or parts thereof.	Deliberate changes in sections or parts thereof as per the following sub-divisions.
<b>3</b> Main provision; <b>30; 41; 42</b> (2) (e) (i); <b>46</b> (1) proviso; <b>50</b> (2) amended and (3) deleted; <b>54</b> (2) (h) proviso 2, explanation to; <b>55</b> (4) deleted; <b>61</b> (1); <b>65</b> Main provision amended and proviso added by the proviso to S. 35 of the Amending Act; <b>68</b> (1); <b>73-A</b> , <b>77</b> (1); <b>84; 85</b> .	<b>2</b> (6), (a) (iii) and (b) (iii); „ „ Explanation II; <b>3</b> (iv); <b>26; 35</b> (1) (b); <b>36; 38</b> (b); <b>52</b> (1).	<b>Constitution of the Board—</b> <b>4</b> (3) (i) (a) and <b>83</b> (2) (a); <b>Powers of the Board and the Court—</b> <b>16; 66</b> , proviso 2; <b>68</b> , proviso 2; <b>Control over the Board—</b> <b>2</b> (4) (a), (aa), <b>9</b> (1), (2), <b>15</b> (1), (2). <b>Earlier disposal of work—</b> <b>17</b> (1), <b>32</b> (1), <b>37</b> (1) to (5), <b>51</b> (a), (b), (c), <b>52</b> (3), (4); <b>54</b> (2) (h), proviso 1; <b>63</b> (1) (2); <b>83</b> (2) (hh). <b>Facilities to parties generally—</b> <b>2</b> (8-A), <b>23</b> (4), <b>67</b> , proviso 2, and <b>78</b> (1); <b>Facilities to parties engaged in Defence Services—</b> <b>2</b> (6) (a) proviso and explanation, <b>67-A</b> , <b>83</b> (2) (mm); <b>Facilities to debtors—</b> <b>54</b> (2) (b) proviso 1 deleted; <b>Facilities to scheduled banks as creditors—</b> <b>2</b> (11-A), <b>3</b> (vi), <b>47</b> (2) to (5). <b>Recognition of Primary Land Mortgage Banks—</b> <b>55</b> (1), (2).

It can be seen from this table that several sections and parts of sections remain quite unaffected by the Amending Act and that whereas some amendments could be effected by altering the language

of or deleting parts of sections, quite new sections or parts of sections were required to be added in order to effect other amendments. Moreover there are certain amendments which are applicable to the proceedings of such Boards only as are established after the coming into operation of the Amending Act while the remaining ones are such as are applicable to the proceedings before all the Boards whatever. In order that those who may have to deal with the Act in any capacity may have all these facts vividly before their mind's eye and may, in case of failure of memory, be able to ascertain any of them at a glance, I have appended three tables at the end of this Introduction. Many though these changes are, the object and the scheme for giving relief embodied in the original Act remain the same. What the changes aim at is to make the machinery for giving effect to them more effective on removing the defects which were brought to light by the experiment and to expedite the achievement of the object as much as possible in the changed economic conditions brought into existence by World War <sup>2</sup>II.

### III

The reasons given by the Finance Minister in his *Statement of Objects and Reasons* are:—(1) that both the Royal Commission on Agriculture and the Indian Bank<sup>1</sup>ing Inquiry Committee had considered the question of agricultural indebtedness, to which fresh attention had been called for some time and come to the conclusions that unless each province adopted some measure of compulsory liquidation of the debts incurred by the agriculturists there was no hope of that indebtedness being eradicated and that it was necessary to do so in the interests of the community at large because the debtors were compelled even against their wish to dispose of their annual produce at inopportune times, which was one of the causes of the fall of prices of commodities in the market. Now when we turn to the Report of the Royal Commission, which was published in 1928, we find that the said Commission had come to the conclusions that the *Dekkhan Agriculturists Relief Act, 1879* was being evaded in the parts of the country to which it had been applied, that the *Usurious Loans Act*,

2. SS. 54 and 55 have been further amended by Bom Act II of 1946 with the object of freeing as many debtors as have the requisite means from the clutches of the village money-lenders as soon as the amounts due from them to the latter are ascertained.

1918 had become practically a dead letter in each province, that though in the present state of rural finance it was not possible to render the business of the village money-lender illegal, it was necessary to put salutary checks on his dishonest methods and that a remedy for the disinclination of the agricultural debtor to take advantage of the provisions of the *Provincial Insolvency Act, 1920* must be found out, that in view of such conclusions it had recommended a detailed inquiry in each province likely to help determine the lines on which the agricultural class could be relieved of indebtedness, the money-lender class could be put under restraint and the rural population could be given the benefit of a law of insolvency suited to its requirements and that it also suggested the passing of an Act on the lines of the *Punjab Money-lenders Bill* then under consideration in the Punjab and the *English Money-lenders Act, 1927* and a simple law of Rural Insolvency in each province. Similarly when we turn to the Report of the Indian Banking Inquiry Committee published in 1931 we find that it had appointed Provincial Banking Inquiry Committees in all the provinces of India with a view to make a detailed inquiry in each province on certain lines laid down by it, that on receipt of their reports it had come to the conclusion that the causes of agricultural indebtedness in Madras, which it had adopted as the basis of its Majority Report, were almost the same as those in the Province of Bombay, that the consequences of such indebtedness were almost the same everywhere as in Madras and Bombay and that it was in their opinion of supreme importance from the point of view of the economic prosperity of the country as well as for the purpose of stemming the growth of discontent among a large section of the population that a serious effort should be made to find a remedy for the chronic indebtedness of the agriculturist so far as it relates to his unproductive debt and that it had also made several specific recommendations. Out of them those pertinent to our subject were:—(1) steps to be taken for voluntary settlement through co-operative societies as far as possible, and also for compulsory settlement by legislative enactment and for declaring a debtor unable to pay his debts to be an insolvent under a special Rural Insolvency Act to be passed, (2) the business of money-lending to be brought under control by adopting a system of licensing and control by an Act on the lines of the *Punjab Regulation*

of *Accounts Act, 1930*, making it illegal to charge more interest than is allowed by the Hindu law Rule of Damdupat and amending the *Usurious Loans Act, 1918* as may be found necessary. This being a report of an All-India Committee the recommendations made therein are of a very general nature. For the recommendations particularly suited to the conditions in the Provinces of Bombay, we must turn to the Report of the Bombay Provincial Banking Inquiry Committee published in 1930. Doing so we find that it had made a detailed inquiry into the working of the *D. A. R. Act* besides consulting the High Court, Bombay and the Court of the Judicial Commissioner, Sind and had after examining all the *pros and cons* of the case recommended in para 238 at p. 181 of their Majority Report that "the Act should be repealed and a new Act embodying the principles which we mention in the subsequent paragraphs should be passed". The said principles as set forth in paras 240-44, briefly stated, are:—

1. The new enactment should apply only to small and genuine agriculturists, the definition of the term "agriculturist" being substantially modified for that purpose so as to confine the benefit of the Act to those who actually engage personally in agriculture and whose income is below a certain specified figure, which should not be high.

2. The system of licensing of money-lenders on the lines of the *Punjab Regulation of Accounts Act, 1930* should be introduced, the *Usurious Loans Act, 1918* not being sufficiently comprehensive.

3. The provisions of the law of insolvency should be so simplified as to suit rural conditions and embodied in a special Rural Insolvency Act as suggested by the Royal Commission on Agriculture.

If we now examine the provisions of this Act in the light of these recommendations we find that the Bombay Legislature has encouraged voluntary settlement, by enacting SS. 23 and 24 of this Act, made provisions for compulsory settlement in SS. 48 to 52, which are applicable after accounts of the principal and interest are taken under SS. 38 to 46 on specific lines, which include reduction of both, in the case of loans taken before 1-1-31 by 30 and 40% respectively according as the loans were taken during the course of the preceding year only or before that and although it has not passed a special Rural



Insolvency Act applicable to all rural debtors indiscriminately, it has enacted SS. 68 to 72, which constitute Chapter IV of the Act, relating to *Insolvency Proceedings*, whereby the Board is required to declare a debtor whose debts have been scaled down to be an insolvent if certain conditions are fulfilled and the Court is empowered to declare an insolvent a debtor against whom an award was made but whose income is insufficient for paying a certain number of instalments. As regards the introduction of the system of licensing money-lenders, the then Government of Bombay had drafted a very thoughtful Bill containing 42 sections divided into 5 chapters, in the year 1938 (Bill No. VII of 1938) but owing most probably to the opposition of the representatives of the money-lending classes and bodies, it could not get it passed into an Act till it laid down office. However a reference to Rules 38 to 40 made by the subsequent Provincial Government with respect to the grant of authority to advance loans under S. 78 to debtors who are parties to proceedings or awards made under this Act will show that for that limited purpose the said government has acted on the principles underlying Chapters III and IV of the said Bill. Lastly, a reference to the definition of the term "debtor" as contained in S. 2 (6) of this Act read with its two explanations, with S. 2 (5), (8), and (12) to (14) together with S. 20 thereof will show that the Legislature has acted on the principle suggested by the Provincial Committee for redrafting the definition of the term "agriculturist". The two other suggestions of that Committee are only repetitions of those of the Central Committee on the points to which they relate.

#### IV

It will have appeared from this short history of this piece of legislation that the main principles on which it has been drafted had been settled by the Banking Inquiry Committees above-mentioned in 1930 and 1931 as recommended by the Royal Commission on Agriculture in 1928 and that therefore the credit which can be given to the Congress Government of 1937-39 in connection with this measure is that it took up the question of giving statutory relief to the agricultural debtors of this province in right earnest, made the principles laid down by the said Committees the foundation of its own policy, implemented, and at places even supplemented them,

Part played by  
the Congress Gov-  
ernment in it.

where necessary, while investing them with a legislative garb, defended them where it could, and modified them where it was persuaded that it should, while the Bill was before the Select Committee constituted of the representatives of both the money-lenders and the agriculturists and its own, adopted the same attitude when it came before the Assembly for its second reading and with the support of its unquestioned majority therein carried it through in a form so modified as to leave no ground for complaint to both the rival interests and as to withdraw all opposition at its third reading.

It has been contended by some persons that the measure had been carried through hurriedly because the Congress Government had decided to carry it through before it laid down office, which it expected every moment to do. My study of the Minutes of the Debates in the Legislative Assembly, 1939, Volumes V, VII and VIII has however convinced me that such a charge is wholly unjustified. And I have my reasons for that conviction. It appears from the Minutes of the Debates in the said Assembly that the Bill had very probably been put into shape somewhere about February or March 1939, that it was placed before the Assembly for its first reading on 4th April 1939 and referred to a Select Committee constituted as above-stated after a considerable discussion on the underlying principles, that it was returned by that Committee in an appreciably modified form on 25th September 1939, that at its second reading it was discussed clause by clause and even at times sub-clause by sub-clause, hundreds of amendments to clauses, sub-clauses and even words, figures and dates were proposed, discussed and either accepted or put to the vote, that out of the latter a few were passed and the rest rejected and that the whole process had lasted for one full month ending on 25th October 1939. It is true that the Government of the day had not taken much time to get the Bill passed by the Legislative Council and that it passed it in the same form in which it had been sent up by the Legislative Assembly. That must however have been due to the representatives of both the parties in that Council having been satisfied that their colleagues in the Assembly had exerted themselves to the best of their capabilities to get the provisions of the Bill modified in the interest of their constituents. The facts that H. E. the Governor recommended it for assent and that H. E. the Governor General gave it even after

the Congress Ministry had laid down the reins of office, is proof positive of their being satisfied that the Assembly had been given by the Provincial Government of the day sufficient time to consider all the provisions of the Bill carefully and patiently. And after it was placed on the statute-book the Provincial Government in 1941 rightly considered it its duty to give it a fair trial because it was an experiment on a line quite different from those on which the previous ones made with the same objective had been framed. This departure was necessary because the previous ones had failed in their purpose as found by the Royal Commission on Agriculture and recorded at pp. 431-43 of their Majority Report, after a careful examination of all the legislative expedients so far adopted. Since 21st April 1945 the Act has been amended so as to remove such defects as were found on inquiry to exist therein and since 1st May 1945 it has been put into operation in a considerable number of areas distributed over all the districts of the Province. It is not impossible that owing to the operation of its provisions in such varying conditions some defects not yet noticed may be found which may not be curable by the application of the canons of construction by the Boards or the Courts concerned or by the addition of new rules which the Provincial Government has under S. 83 power to make from time to time. Such defects will have to be left to be cured by an Amending Act when practical experience proves their existence.<sup>3</sup>

## V

The nature of the remedy provided by this Act is that creditors as well as debtors are given by S. 19 of the Act the right to call upon the other party by a notice in writing to file a statement of particulars before a competent Board as to what he believes to be due by or to him to or from the party giving the notice and to supply him with a copy of such statement. It is not necessary for this purpose to make any application to the Board itself or to incur any more expense than is absolutely required to send the notice by registered post to the party concerned and a copy thereof to the Board. Any party availing himself of this right is not also under any legal obligation to start any proceeding under this Act after the notice

<sup>3</sup> For the slight amendments made in SS. 54 and 55 by Bom. Act II of 1946 see foot-note 2 *supra*.

has been complied with. However by availing himself of it he will be put in possession of the necessary information which would enable him to decide whether he should make overtures for an amicable settlement of the dispute, if any is found to exist between him and the other party or to make an application to the Board under S. 17 (1) or (2) as the case may be, for an adjustment of the debt. If there is no dispute or if there is one but it is amicably settled by negotiations directly between the parties or through mediators, any of them may within 30 days of the settlement of terms make an application under S. 23 (1) for getting it recorded and certified. The Board would thereupon, after making such inquiry as is necessary to satisfy it that the debtor in the application is a debtor under the Act, that the total debt due by him did not exceed Rs. 15,000 as calculated upto the relevant date and that the application has not been made in order to defeat or delay other creditors of the debtor, record and certify the settlement. It would then call upon the debtor to declare whether there are any other debts not included in the settlement and if it is satisfied that there are none, proceed at once to make an award in terms of the settlement. The court-fee payable on such an award is Re. 1 only according to S. 23 (4) as it now stands. If it has reasons to believe that there are such other debts, it would treat the application under S. 23 as if it were one under S. 17 and proceed accordingly to adjust the other debts, leaving the settlement already recorded and certified untouched and incorporating it in the award which it would ultimately pass.

If no settlement takes place, the party giving the notice would be entitled to file an application under S. 17 (1) or (2), as the case may be, in the form prescribed by the Rule 16 of the Rules made under this Act, which is either Form No. 1 or No. 2 according as the person proposing to make the application is a debtor or a creditor. The forms are so drafted as to satisfy the requirements of SS. 17, 18 and 22. Even after such an application is filed, if the parties to it, *i.e.* the debtor and all his creditors, are able to settle the difference between them amicably so as to avoid coming under the other provisions of this Act, they can inform the Board of it under S. 24 and if it is satisfied that the debtor has made it voluntarily and that it is for his benefit, it would make an award in terms thereof. A court-fee of Re. 1 only is payable on such an award also instead

of that payable under S. 60 in the case of an award made under S. 54 or 55. After it is paid the Board would transmit it to the Court for registration and on the Court registering it, it would be executable as a decree of the Court under S. 63. For that purpose the Court has to send the award to the Collector.

If and so long as no such settlement is arrived at, the Board must proceed as provided in this Act. The first step it has to take is to issue notices under SS. 31 and 47 with a view to collect the necessary and reliable materials for making an award under S. 54. The notices to be issued under S. 31 are to be served on the debtor if he is not the applicant, and on all his creditors, or if one of them happens to be the applicant, on all his other creditors, including those who had advanced loans for the financing of crops after 1st January 1939, or the date of establishment of the Board, as the case may be. Those under S. 47 are to be served on the Provincial Government and the other claimants, if any, mentioned in S. 3 except the crop-financiers of the class above-mentioned. Those who are served under S. 31 are required to file statements in the prescribed forms which are the same as those for the statements to be filed under S. 22. As the Board has to do nothing with regard to the claims of the creditors mentioned in S. 3 on whom notices are to be served under S. 47, on receipt of replies from them, except to utilise them while determining the value of the property of the debtor and his paying capacity and making an award, we will leave them for the present and proceed to consider what it is required under the Act to do on receipt of statements from the creditors served with notices under S. 31.

The next step that it has to take on receipt of such statements is to decide the two preliminary points mentioned in S. 35. In order to enable it to do so it would have before it the statements filed under SS. 22 and 31. It has also been invested by SS. 33 and 34 with sufficient powers to examine parties, call for books of account and other necessary documents, summon and examine witnesses and pass all the necessary orders. If it comes to the conclusion that the debtor in the application is not a debtor as defined in S. 2 (6) read with its explanations, S. 2 (5), (8), and (12) to (14) and S. 20 or that the total amount of his debt as calculated upto the relevant date exceeds Rs. 15,000, it must dismiss the application and under S. 36 refund the

court-fee paid by the creditor if he is the applicant. The party aggrieved by an order of dismissal under this section has a right under S. 9 (1) to appeal to a competent Court. If he does not succeed there too, he can submit to the order or seek his remedy under the ordinary law and under S. 75 he would be entitled to exclude the period *bona fide* spent in pursuing his remedies under this Act. If on the other hand the decision on both the points is favourable, the Board must proceed further.

The further step it is then required to take is to take accounts as directed by S. 38 after examining the parties as required by S. 39 and making an inquiry into the history and merits of the case as provided in S. 40, to which S. 41 lays down an exception in the case of a debtor making a true and voluntary admission of a claim. While making the said inquiry it is required to go behind all agreements between the parties as to the mode of making up accounts and all settlements made between them but if the transactions between them had commenced more than 20 years before the commencement of the operation of this Act any settlement of accounts which may have been arrived at before the said period of 20 years and is in writing signed by the debtor or the person, if any, through whom he may have derived his liability, that settlement must, according to the proviso to S. 40, be respected and accounts of the transactions since the date thereof only should be taken. The principal features of the mode prescribed by S. 42 are set out at length in the commentary on that section. The one that requires special emphasis here is that if on making up accounts of the principal and the interest separately, it is found that on the date of the application a larger amount of interest than that of the principal was due, it should be cut down to such an extent as to make it equal to that of the latter. The aggregate of both thus arrived at is to be taken as due on the said date.

It has been stated above that the Board has to give a notice to certain creditors under S. 47 with a view to get replies from them. They are those mentioned in clauses (i) to (iii), (v) and (vi) of S. 3. Rule 27 gives them a reasonable period of time from the date of service of the notice on each of them respectively within which to give their replies. Hence by the time the Board has taken all the necessary steps with regard to the claims of the other creditors

except the crop-financiers of the class mentioned, upto the stage of the scaling down of debts, if and in so far as necessary, replies will have been received from the said privileged creditors. Thereout the Provincial Government through the Collector, the co-operative societies and scheduled banks are expected to intimate not only what amounts are due to them but also how far they are prepared to make remissions thereout. The amounts due to the Local Authorities, if any, the said crop-financiers if any, and the maintenance decree-holder, if any, are to be held fully payable while out of those which may be due to Government, the co-operative societies and the scheduled banks those only are to be held payable which may be left after deducting the amounts of remission which they may have expressed their willingness to make. All these amounts are to be deducted while determining the value of the property of the debtor under S. 50(2).

The kinds of property to be excluded while doing so have been mentioned in S. (1) and (3) and the Provincial Government acting under sub-section (4) has by Rule 28 prescribed the manner in which the market value of the remaining properties are to be ascertained. For determining the paying capacity of the debtor principles are laid down in S. 51 of the Act. And since it may be found in some cases that the debtor had under pressure passed a sale-deed with respect to a property of his on the security whereof he had borrowed some money from a money-lender who may or may not be his old creditor, S. 45 has empowered the Board to set aside such bogus sales and treat them as mortgages. It may also turn out that a debtor had made an alienation or created a bogus incumbrance in order to delay or defeat his creditors. Section 19 has therefore empowered the Board to treat such alienations and encumbrances as void and to refuse to take them into consideration while determining the value of his available assets and his paying capacity.

This is to be done with a view to see whether it is or is not necessary to scale down the debts of the debtor as provided in S. 52 read with S. 56. This scaling down once done is final according to S. 53, not only as regards any further proceeding before the Board except as provided in S. 57 but also as regards any action which may be maintainable in future in any civil court.

This is followed by an award under S. 54 in the form prescribed by Rule 29(1). The Board should in certain cases, falling under S. 55, before taking that final step, put the creditors to the option of suffering an award for the debts as scaled down to be passed or of agreeing collectively to submit to a further scaling down of their *pro rata* so as to bring their total amount to a sum not exceeding 50% of the value of the immoveable property of the debtor and to receive Government-guaranteed bonds for the respective amounts so due to them from the Bombay Provincial Co-operative Land mortgage Bank or any other bank which may be authorised in this behalf by the Provincial Government. If they agree, the Board has to frame a scheme and send it for acceptance to the bank concerned and if it accepts it, to pass an award for the amount of the bonds as provided in S. 55(2) in Form No. 10 prescribed by Rule 29(3).

If any question of fact or law is required to be decided while conducting the proceedings under this Act, upto the said last stage, the Board may decide it under the provisions of S. 6. If it entertains a doubt on any question of law or usage having the force of law that may arise, it can under S. 58 refer it for decision to the F. C. Subordinate Judge within the local limits of whose special jurisdiction it may have been established and on receipt of his decision make an award based upon it under S. 58. That section has remained unamended though S. 9 and 15 are amended.

Once an award is made it is final except as provided in S. 9 in Chapter II which allows an appeal to be filed against it to a competent Court in all cases except those specifically excluded and as provided in S. 57 which empowers a Board to re-open it if certain facts are proved. After making an award either under S. 23, 24, 54 or 55, the Board is required to send it for registration to the competent Court under S. 61, on recovering the necessary court-fee leviable in the case of those under SS. 54 and 55 from the party ordered to pay it. The Board thereafter becomes *functus officio* and whether the Court to which an award is transmitted registers it or not, the very fact that the Board has made it is under S. 59 sufficient to render invalid any claim on the part of a creditor to recover a larger amount than he is held by the award entitled to recover from the debtor.



The Court to which the award is transmitted is required to register it subject to the provisions of S. 62.

The effect of registration is that the award, under whichever section made, has the same legal effect as a decree of the Court registering it and is executable as such by that Court through the Collector of the district in which the immoveable property of the debtor is situated, to whom the execution of the award is to be transferred under the amended S. 63(1). He is required on such transfer to proceed to do the work under the provisions of SS. 69 to 72 of and Schedule III to the Code of Civil Procedure, 1908. That does not, however, restrict the rights under other laws of Government, or a local authority or a co-operative society to recover its dues in any other legal manner or that of the bank concerned in the case of an award made under S. 55 to recover the amount mentioned therein in the manner provided by S. 55 (3).

The execution of any award is made subject to the provisions of S. 64 which require postponement of execution to be made if Government has suspended or remitted the collection of land-revenue to the extent of one-half or more than that in any year.

The rights of creditors under the award are safeguarded by the prohibition by S. 65 of any alienation of his property by a debtor who is a party to a proceeding or an award under this Act except with the permission of the Provincial Government and by introducing a system of licensing of money-lenders by rules made under S. 78 for the purpose of giving loans to such debtors for the financing of crops while their rights and those of resource societies to whom the debtors may be indebted are further safeguarded by prohibiting by S. 77 any alienation of standing crops or produce of their land by them without their permission and making it an offence to do so or to permit any debtor to do so. If any creditor alleges that he had suffered by the amount due in respect of the loan advanced by him to a debtor having been cut off under the provisions of this Act, the Board is directed to grant him a certificate under S. 76 which the civil court can take into consideration while allowing interest and instalments in a suit by or against that creditor.

As the Board is not concerned with execution proceedings it cannot ordinarily order a sale of the debtor's property or of any

portion of it. However the provisions of S. 66 invest it with a discretionary power to order the sale of a portion of his property for the liquidation of his debt or any portion of it if it is satisfied that it is in his interest to do so. This power is exercisable at any stage of the proceeding before it. The Court hearing an appeal against an award is also invested with the same power and it can exercise it at any stage of an appeal. This power has, by the addition of a proviso by the Amending Act of 1945, been made subject to the sanction of the Collector in the case of a land to which S. 73A of the Bom. L. R. Code, 1879 is applicable. The Board and the Court have a similar power under S. 68 (3) as regards the property of a debtor who is declared to be an insolvent.

One remarkable provision in the Act in connection with proceedings before the Board is that contained in S. 67 which is to the effect that no pleader, vakil or mukhtyar and no advocate or attorney of a High Court can, as of right, appear before it on behalf of any party. This prohibition is however subject to two provisos, one of which allows a Board to permit a party to appear by any of them at his own cost, if after examining the parties, it is of opinion, that it is a fit case as defined in the section for granting such permission and the other of which permits any party to appear, as of right, through an agent duly authorised in writing as therein provided, who should not however be a member of any of the classes of legal practitioners mentioned therein. Such an authority is exempted from stamp duty.

There is no prohibition in this section against the appearance of professional lawyers before the courts which have to discharge certain duties under this Act such as those of registering an award and transferring it for execution to the Collector, receiving and hearing certain appeals, considering points of law or usage having the force of law referred by a Board for decision etc, or before the Collector in execution proceedings. It is also remarkable that this is not one of the sections which have been extended to the whole province and that therefore if any question arises under this Act in any suit or proceeding before a court situated in any area to which the remaining sections are not extended and in which they are not put into force, lawyers can appear before such a court for there is not any other

provision in the Act directly or indirectly prohibiting the appearance of lawyers in such cases.

The additional section 67A empowers a person interested in a party on active duty in any of the Defence Services who cannot appear either personally or through an agent duly appointed for that purpose, to obtain from the Collector of the district concerned a certificate authorising him to act as an agent of such person in a matter pending before a Board or a Court to which that person is a party.

Now the Board may, after the paying capacity of a debtor is determined, and his debts scaled down as provided in SS. 51 and 52, be in a position to determine whether he would or would not be able to pay up his debts by annual instalments not exceeding 12 in number, which is the maximum number of instalments by which they can under the amended S. 54 be ordered to be paid up. If it comes to the conclusion that he can, then only it has to pass an award under the said section. If its conclusion is that he cannot, it should not act under that section but under S. 68 (1) which requires it to declare the debtor to be an insolvent, whether he likes it or not and whether any of the creditors does or does not pray for such a declaration being made.

Similarly the Court to which an award is transmitted for registration, after the Board has made it, may find that any two consecutive or any three instalments out of those fixed by the award cannot be recovered by the sale of the movable property of the debtor. In such a case the Court too is authorised by S. 68 (2) to pass of its own motion, if it thinks it proper to do so, an order adjudicating the debtor in the award an insolvent.

The order of adjudication, whether made by the Board or by the Court, operates as an order of adjudication made by a competent court under S. 27 of the *Provincial Insolvency Act, 1920* and thereupon the other provisions of that Act, so far as they are applicable and are not modified by those of Chapter IV of this Act, become applicable to the case of that debtor according to S. 69 of this Act. But since all the necessary inquiries as to the liabilities and assets of the debtor must have been made before the stage at which the said order could be made either by the Board or the Court nothing remains

for any of them to do except to order the sale of the debtor's property for distribution amongst his creditors. S. 68 (3) accordingly provides that after making the order, the Board or the Court, as the case may be, shall direct that one-half of the property of the debtor liable to be attached and sold under S. 60 of the *Civil Procedure Code*, be sold free of all incumbrances and that if after its sale it is found that the debtor remains in possession of more than 6 acres of irrigated land or more than 18 acres of dry land or any land assessed at more than Rs. 30, whichever is greater, the Board or the Court shall further order the sale of the property in excess of that limit, free of all incumbrances. This power too is subject to the same restriction as that conferred by S. 66.

The next step after that would be that of the distribution of the net sale-proceeds amongst the creditors of the debtor. S. 70 directs the Board or the Court, as the case may be, to do that with due regard to the order of priority mentioned in the provisoes to S. 54 (2) (g).

Lest there may be a conflict of jurisdictions, S. 71 prohibits any other Court from entertaining or proceeding with an application relating to the insolvency of that debtor and in order to cut the matter short, S. 72 bars appeals against orders passed by the Board or the Court under this Chapter except on the ground of a non-disclosure by the debtor of any material facts relating to his assets or liabilities.

The Board frequently referred to in the above description of the remedy is the Debt Adjustment Board which may be established under S. 4 of the Act by the Provincial Government for any local area or for any class of debtors in any such area and may consist of either one individual who holds or has held office under the crown in India or who has been practising as a lawyer for such period as may be prescribed by a rule made in this behalf and who may be assisted by not more than four assessors or a body or association of persons or a number of persons not less than three and not more than five in number, one of whom is to be the Chairman and another the Vice-chairman of the Board.<sup>4</sup> The Board con-

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4. All the Boards established upto this time consist of one individual only and no assessors have been appointed to assist any of them.

stituted in any of these manners is according to S. 15 as now amended under the control of the District Judge within the local limits of whose jurisdiction it may have been established, for administrative purposes. It is also under his judicial control. By the amended S. 9 (2) he is empowered to transfer for disposal any appeals filed in his Court to any Assistant Judge or Civil Judge (Senior Division) working under him who may have been empowered to hear appeals according to the provisions of S. 17 or 27 of the Bombay Civil Courts Act, 1869, as the case may be. However, subject to these limitations, the Board has under S. 6 ample powers to grant the relief contemplated by this Act and to decide all incidental questions of law or fact or mixed law and fact that may arise in the course of the proceedings before it, the Chairman and members thereof are "public servants" within the meaning of S. 21 of the *Indian Penal Code, 1860*, according to S. 80, all the proceedings before it are, according to S. 8, "judicial proceedings" for the purposes of SS. 193 and 228 of *the said Code* and its Chairman and members and other Government officers connected with the operation of the Act are, according to S. 81, free from all civil and criminal liability in connection with all acts done or intended to be done by them in good faith under this Act. The Board has also been invested with powers by SS. 33 and 34 to summon and examine any person whom it considers necessary to examine and to call for any documents which it considers material and any criminal offences committed in connection with orders made for such purposes are punishable under S. 82.

The "Court" referred to in the above remedy is either the Court of the District Judge or Assistant Judge or Civil Judge (Senior Division). Which it is in a particular case has to be determined by a reference to S. 2 (4).<sup>5</sup>

All that has been stated in this section relates to a remedy by way of an initiation of an original proceeding except that while speaking of the powers of the Board it has been said that it is under the judicial control of the Judge of the district in which it may have been established or of the Assistant Judge or Civil Judge (Senior

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5. See also on this point the ruling of the Bombay High Court in *Pandurangrao V. Sheshadasacharya* (46 Bom. L. R. 711).

Division) to whom an appeal may have been transferred for disposal by the District Judge. It has not yet been made clear in which cases an appeal is competent and whether an aggrieved party has any other remedy open to him in those cases in which no appeal lies. As for the first of those points, S. 9 (1) as it now stands provides that every award, except that made under S. 23 (4), 24 or 55 and every decision of a Board made under SS. 23 (3) and 35 (2) is appealable. This means that every decision of a Board which finally disposes of an application, is appealable, whatever its nature, and conversely no interim decision is appealable. But in the latter class of cases the aggrieved party is not without a remedy, for if in consequence of the decision, the proceeding is continued, an award would ultimately be made therein and when that is made, an appeal can be preferred and the interim decision can be made a ground of appeal, if it can be shown to fall within any of the categories mentioned in S. 12. As for an order passed by a civil court under S. 37 as it originally stood the High Court of Bombay had asserted its right to entertain a revision application against it even though it was declared to be final, because S. 115 of the Civil Procedure Code remains unaffected by that declaration and by the provisions of S. 9 of this Act.<sup>6</sup> Under S. 37 (1) as it now is, a civil court is not required to determine the preliminary points mentioned in S. 35. It has nevertheless power under it to determine whether a suit, application for execution or miscellaneous proceeding pending before it, does or does not relate to the recovery of a debt and whether it does or does not involve the said two points, for it is then only that a case for a transfer arises. It is worthy of note that the present section is silent as to the finality or otherwise of the decision of the court on the said two questions. Such a decision does not fall under any of the categories mentioned in S. 9 (1). But it seems that the power of the High Court of Bombay to which the civil courts in this province are subordinate, to entertain a revision application under S. 115 of the Code of Civil Procedure is unaffected by any section of the Act even as amended and that therefore the party aggrieved by an order of the court on any of those questions is entitled to make such an application.

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6. See the ruling in Pandurangrao V. Sheshadasacharya (46 Bom. L. R. 711).

The above-mentioned remedy is primarily intended for the benefit of those persons who answer to the description of a "debtor" under this Act given in S. 2 (6) read with S. 2 (5), (8), (12) to (14) and S. 20. Accordingly not only individuals but also undivided Hindu families which are indebted to others, hold land used for agricultural purposes and have been cultivating such land personally as defined in S. 2 (13) read with its explanations from a date prior to the relevant date mentioned therein and whose annual income from non-agricultural sources does not ordinarily exceed 20 per cent. of their total annual income or does not exceed Rs. 300, whichever is greater, in the case of individuals and does not ordinarily exceed 20 per cent. of the total annual income or does not exceed Rs. 500, whichever is greater, in the case of undivided Hindu families, are "debtors" under the Act. Not only that. The term "agriculture" includes for this purpose "horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock-breeding and grazing of cattle, sheep etc." Only it does not include "the leasing of land or cutting merely of grass or wood." Hence all debtors who do any of the things which are included in the term "agriculture" can count their income from such sources as income from agricultural sources. Further "to cultivate personally" does not mean merely to cultivate by one's own manual labour but also by that of a member of one's family or by servants or by hired labourers working under one's supervision or under that of a member of one's family. Widows, minors or disabled persons surviving a deceased person who was cultivating land personally and an undivided Hindu family getting land cultivated by any of its members or if there is no adult male member in it by servants or hired labourers, all get the benefit of being "debtors" under this Act. Lastly, although there is the condition that the person or family must be cultivating land used for agricultural purposes from a certain date that condition is to be deemed to have been satisfied if the person or family had been cultivating such land on such date and if even though it may have been evicted from it subsequently, it is cultivating the same or any other land personally at the date of the application under S. 17 or 23.

Persons to whom  
it is available.

Further, when it is said that a man may be indebted to another it is meant according to the definition of "debt" given in S. 2 (5) that his liability may be either in cash or in kind, that it may be a secured one as defined in S. 2 (12), or an unsecured one as defined in S. 2 (14) and that it may be due under a bond, pro-note or any informal note or only under an oral undertaking to discharge it in a particular manner and at a particular time. Hence all those persons who are indebted to others in any of those manners are included in the term "debtor" under this Act.

Lastly it is not necessary according to S. 20 that the liability in the case of a particular debt as above-mentioned should be resting on only one individual or undivided Hindu family. It may have been guaranteed by a surety who may not be a debtor under this Act or it may be falling to the same extent as on the debtor, on any other person who may not be a debtor under this Act for any other reason. This is to say that although the debtor may be jointly and severally liable in respect of the debt along with a non-debtor who may be either a surety or a joint debtor can himself take advantage of this Act.

Now there may be a case in which a debt may have been originally incurred by a non-debtor but somewhere before the date of an application under S. 17 or 23 it may have been transferred or assigned to one who is a debtor under this Act. For such a case S. 21 provides that if the transfer or assignment had taken place upto 1st January 1938, the debtor under the Act to whom the debt may have been transferred or assigned can make an application under any of the sections 17 and 23 but that if it had taken place after that date then he cannot.

It must be borne in mind that there is one limitation applicable to all the persons who are debtors under this Act as above explained. It is imposed by S. 26 of the Act and is to the effect that the total amount of debts due by any single debtor, whether an individual or an undivided Hindu family, must not have exceeded Rs. 15,000 on 1st January 1939 in the case of debtors residing within the areas for which Boards had been established prior to the date of coming into force of the Amending Act of 1945 and on the date of the establishment of the Board concerned in the case of those residing in the areas for which Boards were established subsequently.



It can thus be seen that while the definition has been made sufficiently comprehensive to extend to all those persons whose principal source of livelihood is agricultural income earned by manual labour, sufficient care has at the same time been taken to exclude from it men with very extensive liabilities, those with ample other means of livelihood and also those who resort deliberately to a camouflage in order to get the special advantage which it was the intention of the legislature to give to *bona fide* agriculturists only.

Besides such debtors, creditors too are entitled to make applications under SS. 17 and 23 if they can be made in respect of their claims. It is also obligatory on them to do so, because any debt within the said limit in respect of which no application has been made under any of the sections, although it may be due by a debtor under this Act as explained above, is held discharged under S. 32. They have therefore to be particularly vigilant and to call for the necessary information under S. 19 in order to ascertain whether their debtors are or are not debtors under the Act and whether the total amount of debts due to each of them is or is not within the limits prescribed by S. 26. The proviso to S. 54 (2) (1), which provided for allowing costs to them if the debtors had not made applications within twelve months of the establishment of the Boards, has been deleted, for it ceased to have a practical value when the total period allowed in S. 17 for making an application was reduced to six months.

It is remarkable that S. 2 (6) does not make it an express condition of one being deemed a "debtor" under the Act that he should be actually residing within the particular areas for which Debt Adjustment Boards are established although he must have agricultural land in such an area and must be cultivating it personally within the meaning of S. 2 (13). It therefore appears that even if a person answering to the description of a "debtor" under the Act as defined in S. 2 (6) read with SS. 2 (5), (8), (12) to (14) and S. 20, together with such explanations as any of them have, *actually resides outside a local area* for which a Board is established e.g. in the City of Bombay, to which S. 4 is not but SS. 1 to 3, 7, 17 and certain others are extended and applied, he can make an application under any of the said two sections.

## VII

It must be particularly noted here that the remedy provided by this Act is not available to the debtors and creditors for an indefinite period. For the debtors to make an application under the provisions of S. 17 (1) of the Act as it originally stood a time-limit of 18 months from the date of establishment of a competent Board was available. That period had already passed away in the case of the Boards established before 21st April 1945 when Bombay Act VIII of 1945 came into force. In the case of the Boards established thereafter, that period has by amending S. 17 (1) been reduced to 6 months. S. 17 (2) also applies the same time-limit in the case of applications under that section by creditors. Similarly the time for making an application under S. 23 is thirty days from the date of the alleged settlement of a debt both in the case of debtors and creditors. If there is no competent Board when it is arrived at, the limit would be thirty days from the date of its establishment. If there is one at that time but thirty days had not elapsed by then since its establishment, the applicant would get so much more time than thirty days as may have elapsed before the date of settlement. Moreover since S. 74 of this Act extends the provisions of the *Indian Limitation Act, 1908*, to proceedings under this Act, save as otherwise provided in this Act, the Board would have the discretion to admit both the kinds of applications after the lapse of the prescribed period if sufficient cause for the delay is shown within the meaning of S. 5 of the said Act.

## VIII

In view of the nature of the remedy and the conditions attached to the use that can be made of it, a question arises whether it is open to a creditor who has a claim against a person who is a debtor under this Act, to ignore this remedy altogether and resort to an ordinary civil court for the recovery of his debt standing against such a person and to a debtor to do the same and resort to his remedy in such a court. This question has to be answered by a reference to several sections of this Act. In the first place, there is no section in the whole of this Act prohibiting a person so inclined from doing so or prohibiting

Time-limit for availing oneself of the remedy.

Peculiar nature of the remedy.

an ordinary civil court from taking cognizance of any suit or proceeding started by such a person under the ordinary law. It is also true that the wording of both S. 17 and S. 23 is of a permissive nature and that what S. 73 (i) (ii) and (iii) prohibit a civil court from entertaining or proceeding with is any "suit or proceeding in respect of any matter pending before the Board or the court under this Act," "the validity of any procedure or the legality of any award, order or decision of the Board or of the Court" or "the recovery of any debt made payable under the award". This means that if a suit or proceeding does not relate to any of those matters the civil court can take cognizance of it. True, S. 32 renders void all debts in respect of which no application under S. 17 or 23 has in fact been made or if made it has been subsequently withdrawn under S. 27 and no fresh application has been made under S. 17 or an order made wherein under S. 31 has not been complied with.<sup>7</sup> It is equally true that S. 37 directs all civil and revenue courts to transfer, every pending suit, application for execution and miscellaneous proceeding which relates to the recovery of any debt against a person and which involves the determination of the questions whether such person is a debtor under this Act and whether the total amount of debts due from him on the relevant date was or was not more than Rs. 15,000, to the Board to which applications for the adjustment of such debts would lie. The civil or revenue court concerned cannot now decide those questions. It can only decide whether the suit, application or proceeding relates to the recovery of a debt and whether it does or does not involve the decision of the questions mentioned above. If the decision on those points is in the affirmative, it must transfer the suit, application or proceeding to the competent Board. It is further true that if an application is made to a Board under S. 17 (1) or if a statement is filed before a Board under S. 31 and that application or statement shows that a suit, application or proceeding relating to the debt in question before the Board is pending before a civil or revenue court, that Board has power under S. 37 (2) to call for the record of that suit, application or proceeding by issuing a notice to the court and the latter is bound to send it over. But that section cannot be held to imply

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7. For the full implication of the prohibition contained in that section see the commentary on it.

a direction to the courts not to entertain suits or applications for execution which may not be pending at the date of coming into force of this Act provided they are otherwise maintainable. The only restriction on their maintainability is contained in S. 85. Sub-section (1) thereof lays down that from the date on which a Board is established in any local area, the *Dekkhan Agriculturists' Relief Act, 1879*, shall cease to have force in that area but this is subject to the reservation contained in sub-section (2) thereof, according to which the rights acquired and liabilities incurred, with respect to the debts owed by persons who are debtors under this Act and in respect of whose debts applications can be made under SS. 17 and 23 with due regard to the provisions of S. 26, are enforceable so far as their enforcement is not inconsistent with the provisions of this Act including those of S. 37 thereof. This means that if a suit or application is maintainable under any law other than that contained in the D. A. R. Act, the civil or revenue courts are not debarred from taking cognizance thereof. On the other hand, since the reservation is so worded as to render the repealing provision unreservedly effective in the local area for which a Board is established but to leave unaffected the terms and incidents of contracts made or effected, the validity, or invalidity, effect or consequences, of anything done or suffered to be done, any right, title, obligation or liability acquired, accrued or incurred, and remedy or proceeding that could be resorted to in connection with such right etc., before the date aforesaid, and anything done in the course of any proceeding pending in any court on the said date and permits of any such remedy or proceeding being enforced, instituted or continued so far as such enforcement, institution or continuance is not inconsistent with the provisions of this Act including S. 37 thereof, which directs the transfer of certain pending suits, applications for execution and proceedings and extends to the whole province, it follows that although no suit or application can be filed with respect to contracts made or any rights or obligations acquired or incurred since the said date in the above-mentioned area, any of them may be filed with respect to contracts made or rights or obligations acquired or incurred before that date and may be proceeded with in such a manner as not to contravene any of the provisions of this Act. And in spite of the provisions of S. 73 certain suits such as suits for the recovery of

possession of property can even be continued in a civil or revenue court because the question of recovery of a debt due from a debtor under this Act cannot be held to be involved in such suits.<sup>8</sup>

The said repeal also leaves unaffected, by virtue of the temporary provisions of S. 86, the rights and obligations, acquired and accrued prior to the establishment of a Board in an area, of those persons who are either not debtors under this Act or the total amount of whose debts on 1-1-39 or the date of establishment of the Board concerned, as the case may be, exceeded Rs. 15,000, to such an extent as to permit of the institution of suits with respect thereto within 3 years of the date of establishment of a Board for any local area and the continuance of proceedings arising in or out of suits instituted during such period, till their termination.

## IX

The reference to the repeal of the *D. A. R. Act* with the said reservations, brings to the fore the question how far the passing and operation of this Act are likely to result in a change in the existing law on the matters touched by it.

Change in law  
effected by this  
Act.

Naturally the most material change that this Act is likely to effect is in the law as to the relation between a debtor belonging to the agricultural class and his creditors. It is this. The special object of protection and care under the *D. A. R. Act*, was an "agriculturist" as defined in S. 2 of that Act. That definition was found by long experience in several districts to have been so loosely-worded as to extend the benefit of that Act to persons who were not *bona fide* agriculturists but managed to be held so by taking advantage of that looseness. Nobody however denied that some of the sections of that Act had been based on very sound principles e.g. SS. 7, 10A, 12 and 13, 13A, 15A, 15B, 15C, 15D, 16, 20, 22, 68, 69 and 71A. Still it was almost universally recognised that both the debtors and the creditors had been resorting to dishonest practices in order to take advantage of them and that therefore some changes tending to

8. This is made clear by the ruling of the Bombay High Court *In re. Reference under Or. XLVI r. 1* of Schedule I to the Code of Civil Procedure, 1908 reported in 45 Bom. L. R. 445. For the combined effect of S. 37 as it originally stood and SS. 73 and 85 see the ruling in *Pandurangrao V. Sheshadasacharya* (46 Bom. L. R. 711.) It must however be borne in mind that S. 37 has been considerably amended.

stop them were absolutely necessary. There was however a difference of opinion amongst the experienced men as to whether the Act should be suitably amended or whether it should be wholly repealed and replaced by quite a new enactment framed in the light of experience. The Bombay Provincial Banking Inquiry Committee considered both the views carefully and recommended its total repeal and substitution by such an enactment. It also recommended certain broad lines on which it should be based and particularly recommended that the definition of the term "agriculturist" should be so framed as to give the benefit of the enactment to *bona fide* agriculturists whose income from any side-occupation of a non-agricultural character, if any, should not exceed a definite moderate limit. Besides the above provisions, there were some in Chapter IV of the old Act as to *Rural Insolvency* applicable to the four districts of Poona, Satara, Sholapur and Ahmednagar. Not only the said Provincial Committee but even the Royal Commission on Agriculture had found that those provisions had become practically a dead letter because they were only of an optional character and an Indian villager was averse to making use of them for fear of social opprobrium or owing to an obsession generated by religious prejudices. Both the bodies had therefore recommended that the necessity of a law of rural insolvency suitable to this province should be considered in order that the indigent agriculturist debtors could be declared to be insolvents without their consent. The Indian Banking Inquiry Committee had endorsed the view of the Commission and the Provincial Committee. Lastly, as a safeguard against the recrudescence of the chronic disease of indebtedness which had been eating into the vitals of the social and economic fabric of the rural parts of the country, the Royal Commission had also suggested an inquiry into the causes which had contributed to the failure of the *Usurious Loans Act, 1938* and had in order to establish control over the questionable practices of the professional money-lenders in each province suggested legislative action on the lines of the *English Money-lenders Act, 1927* and the then *Punjab Regulation of Accounts Bill*. By the time the Bombay Provincial Banking Inquiry Committee made the necessary inquiry in this province and drafted its report, the then Punjab Government had already got the said Bill passed and placed it on the statute-book of the province as *Punjab Regulation of Accounts Act, 1930*. It had therefore recommended action on the

lines of the Punjab Act and the Central Committee had endorsed that recommendation in 1931 and ruled out the possibility of an amendment of the *Usurious Loans Act, 1918* serving the end in view.

These recommendations except that as to the repeal of the D. A. R. Act were of a character applicable to all the provinces of India and the Governments of several other provinces constituted under the *Government of India Act, 1919*, had taken them into consideration since 1933 and having drafted Bills suited to their respective local conditions, got them passed into Acts and put them into operation before they were re-constituted under the *Government of India Act, 1935*. If and where experience proved that the provisions of some of them were defective in any material particulars, they had drafted and got passed some amending Acts also.

The Government of Bombay seems to have turned its attention seriously to the said recommendations in 1938 and as the first step towards implementing them got a temporary measure called the *Bombay Small Holders Relief Act, 1938* passed by the legislature, hoping to replace it within a short time by a relief measure of a permanent nature. It also drafted the *Bombay Money-lenders Bill, 1938* with a view to bring the business of money-lending under control. It was a fairly long Bill containing 42 sections divided into 5 chapters and sought to introduce a system of the licensing of money-lenders whose working was intended to be watched by a Registrar and empowered the Provincial Government and the courts to inflict penalties for the breach of any of the conditions of the license which may come to their notice. It thus sought to establish both administrative and judicial control over the money-lenders "following the lines of the *English Money-lenders Act of 1927*, with such additions as can usefully be borrowed from the different Provincial Acts in India" as the Hon'ble the Home Minister who moved its first reading, put it. The Provincial Acts drawn upon by him seem from the *Bom. L. R. Debates, 1938, Vol. II p. 663* to be the *Punjab Regulation of Accounts Act, 1930*, *Assam Money-lenders Act, 1934*, and *Central Provinces Money-lenders Act, 1934*. Two private bills introduced into the Bombay Legislative Council in 1933 and 1935 also appear to have been referred to. The Government of the day had not lent its support

to the Bills and they had failed but the Congress Government of 1937-39 seems to have made use of them as they had been framed by an elected member on the lines of the recommendations of the Royal Commission on Agriculture and the Banking Inquiry Committees and the Acts passed in the other provinces. But the Congress Government too had thought it wise to "propose to have it referred to a Select Committee which may take its own time to report" and to circulate it amongst the different authorities and commercial bodies for their opinion, because "it would not be proper to place on the statute-book a measure of this important character unless it was fully discussed by the whole province and all points of view properly and duly placed before the Select Committee." That Committee had originally been given 2 months' time to make a report by a resolution dated 29th January 1938. Further extensions were granted till 15th March 1939 and since then the name of this Bill does not appear in the Reports of the Debates in the Legislative Assembly. On 4th April 1939 the Government had however introduced *Bill No. XIII of 1939*, which has now become the present *Act XXVIII of 1939*.

That Act in the areas for which Debt Adjustment Boards are established replaces the *D. A. R. Act* as to the transactions entered into by "debtors" under the Act after it comes into force, but leaves its operation unaffected as to those entered into before it to the extent mentioned and having repealed SS, 3 to 8 of the said *Bombay Small Holders Relief Act, 1938*, revives the rights, liabilities and remedies which had been suspended by S. 11 thereof for the time being, except so far as they are inconsistent with any of its provisions.

Although thus the method of business of the money-lenders has not yet been brought under administrative and judicial control and the future relations between them and the debtors, whether of the agricultural or non-agricultural class, are not affected by that Act, the transactions so far entered into between them and the debtors coming within the limit imposed by S. 26 and the results that would otherwise have flowed from them will be considerably affected on account of several substantial changes made by this Act regarding them. It is true that it is not an amending Act but a repealing Act and will therefore have to be construed by itself. Nevertheless, it is



necessary to know what is now the law under it is as compared with that which was the law under the repealed Act so far as debtors under the Act are concerned. The points on which there is a marked difference between them are :—

(1) The *D. A. R. Act* had been passed at the instance of the Government of India as early as 1879 when there were no Provincial legislatures and no Indian Members either in the Government of India or those of the Provinces. Sections 1, 11, 56, 60 and 62 were therefore made applicable to the whole of British India but the rest of the Act was extended only to the districts of Poona, Satara, Sholapur and Ahmednagar in this province and the Provincial Government was invested with power to extend it wholly or partially to any other district therein or part thereof. The old Bombay Government had made use of this power to extend the provisions of some of its sections only to other districts step by step, but it had never done so in order to extend the whole of the Act to any other district or any part of it. Twenty-six sections of this Act on the other hand have been extended by the amended S. 1 (2) to the whole province and the Provincial Government has power under the amended S. 1 (2) to extend the remaining provisions of the Act to any area other than the City of Bombay.

(2) The title of the Act of 1879 was the *Dekkhan Agriculturists Relief Act* while that of the present one is the *Bombay Agricultural Debtors Relief Act*. Accordingly whereas it was necessary under the former to define the term "agriculturist" and it did so by S. 2 thereof, it was necessary under the latter to define the term "agricultural debtor" and it has done that by defining the term "debtor" in S. 2 (6) and as that definition is so worded as to make it necessary to define what is a 'debt', what is meant by "agriculture" and what it is "to hold land" and "to be a holder," what is a "secured" and what an "unsecured" debt and what it is "to cultivate personally", those terms have been defined in S. 2 (6), Explanation 1 to S. 2 (6), (5), (8) and (12) to (14). The combined effect of these definitions is to extend the benefit of this legislation to many more persons than those who got the benefit of the old Act and to restrict it to those who are *bona fide* agriculturists, which is what the Bombay Provincial Banking Inquiry Committee recommended to be done.

(3) Chapter II of the old Act made use of the already existing machinery of the ordinary subordinate civil courts so far as disputed heavy cases were concerned and Chapter V provided for the appointment of Village Munsiffs at suitable places for the disposal of petty cases and that of Conciliators for that of the uncontested ones and for certifying that a case is a contested one. The appointment of Conciliators under that Act had been stopped since 1911 but the Civil Judges and Village Munsiffs have been exercising jurisdiction under it and will continue to do so so far as they are permitted by the amended SS. 85 and 86 of this Act, which will have to be construed in the light of the notifications issued by the Provincial Government in the exercise of its power under the amended S. 1 (3) thereof. The Provincial Government has put the sections other than Nos. 1, 2, 3 etc., mentioned in S. 1 (3) into operation and has established Debt Adjustment Boards for the areas mentioned in the Appendix hereto. Such Boards have by virtue of the other provisions of the Act, acquired a jurisdiction of a special nature, which they exercise under the supervision and control of the respective District Judges within the limits of whose jurisdiction they have been established.

(4) The regular procedure by way of suits prescribed by the old Act has been given a go-by in this Act and a miscellaneous one by way of applications has been provided for therein. Applications are to be made under it for two purposes only, namely (1) adjustment of debts and (2) recording the settlement of a debt. This remedy is a very cheaper one also than that of a suit because on an application under S. 17 a court-fee stamp has to be affixed on treating it as a suit for accounts and on that under S. 23 one of Re. 1 only, and only one-half of the difference between the fee already paid and that leviable on a plaint in a suit to recover the amount held due by the award is payable under S. 60 in the case of an award being passed on making the full inquiry required by Chapter III in the case of applications under S. 17 but no more fee is payable if a settlement takes place, during the course of a proceeding under S. 17, and in the case of an award made under S. 23, except that of Re. 1. Further if an application of a creditor is held under S. 35 not to be maintainable on any of the two grounds mentioned therein, he gets back the court-fee paid by him. In spite of such facilities an award

of the Board on being registered by the Court under S. 62 becomes executable as a decree of the Court under S. 63.

(5) Under the second proviso to S. 10A of the *D. A. R. Act* only a *bona fide* transferee for value without notice of the real nature of the transaction or his representative holding under a registered sale-deed executed more than 12 years before the institution of the suit against him in which the transaction is called into question is exempted from the operation of that section. But under the corresponding sub-section (2) of S. 45 of this Act all those who hold properties under sale-deeds falling under the following categories are exempted from the operation of sub-section (1) of that section namely :—

- (a) those relating to transactions entered into before 1st January 1927 ;
- (b) those which have been held to be evidence of *bona fide* sale transactions ;
- (c) those relating to transactions concerning properties belonging to a debtor and purchased by third persons from the transferees of a debtor on or before 15th February 1939.

(6) Corresponding to SS. 12, 13, 13A and 71A of the *D. A. R. Act* there are SS. 38 to 42 and 44 of this Act. The principles that in the case of disputed claims the parties should be examined, that an inquiry should be made into the history and merits of the case, that separate accounts should be made up of the principal and the interest, that the principal should be held to have been made up of only the actual advances made from time to time including the price of goods supplied, that interest should in all cases be simple, that it should be calculated upto the date of each payment, that if a payment is made in the form of agricultural produce, or any other kind of goods, or service rendered or if the creditor has gained any other material advantage these should be assessed at their money-value and the amount thereof should first be credited towards the interest and if any surplus remains it should be credited towards the principal and further interest should be calculated on the balance thereof thus left, that both the accounts should be made up upto the date of the action, that if it is then found that the amount of interest exceeds that of the principal both should be equalised according to the

Hindu law Rule of Damdupat and that their aggregate amount should be held to be that due by the debtor to the creditor, are common to both. There is one more principle also common to both and that is that while inquiring into the history and merits of the case from the time of the commencement of dealings between the parties all agreements as to the closing of previous dealings and the creation of a new obligation, the method of making up accounts as in the case of mortgages with possession &c. are to be set aside. This Act however introduces an important exception to it namely, that it holds inviolate a settlement arrived at more than 20 years before the date of the application if it is in writing signed by the debtor or the person, if any, through whom he derives his liability. The important exception will put an end to the difficulty felt in those cases in which neither the creditor nor the debtor has any personal knowledge of any previous transactions and the books with reference thereto had been destroyed on making a settlement. Another distinction is that as to the rate of interest. In both the Acts the principle underlying the provision with respect thereto is the same namely, that if the rate agreed upon is lower than the reasonable one it must be accepted for calculation and that it must be cut down to a reasonable one if it is higher than that.

But this Act differs from the older one in this that while the latter had left it to the discretion of the court to determine what is a reasonable rate in each case, the present Act has for all the transactions entered into prior to 1-1-31 fixed the rate of 12 per cent. for making up accounts up to the end of 1930 and 9 per cent. for making up those for the subsequent period upto the date of the application and from the very beginning for those entered into from 1-1-31 onwards. As the prices of commodities had gone down considerably and the prevailing bank-rates fluctuated between  $4\frac{1}{2}$  and 3 per cent. between the years 1931 and 1939 as the result of a great economic upheaval which sent many of the countries of Europe off the gold standard and raised the price of gold by some 90 to 100 per cent. the above rates for the monetary transactions in the rural markets cannot be deemed to be unreasonable. This Act has also made a departure from the previous law on the subject in two other matters, namely :—(1) that in the case of loans taken before 1-1-31 it directs by S. 42 (2) (e) (i) that interest should be calculated up to

that date and that thereafter 40 per cent. deduction should be made from the amounts of both the principal and the interest if the loans had been advanced prior to 1-1-30 and 30 per cent. if they had been advanced on or after that date, and that further interest should be calculated on the balance of the principal thus left. This may seem arbitrary but the Hon'ble Finance Minister who piloted the Bill containing such a clause, defended it on the ground that the prices of agricultural produce had fallen down about 40 per cent. since the harvest-season of 1931, that therefore the agricultural debtors were not able to pay up the debts which they would have paid up if they had obtained a fair price for their produce and interest had gone on accumulating as a consequence thereof, and (2) that although in all other respects the decrees and orders of a court as to the amount of any claim are sacrosanct under S. 46 (1), they are subjected to the above-mentioned provisions of S. 42 (2), (e) (i) (ii) and (iii). The Amending Act of 1945 has moreover added a proviso to S. 46 (1) to the effect that if it is not possible to gather from the decree how much of the decretal amount represents the balance of the principal and how much that of the interest, two-thirds of the said amount shall be held to be due on account of the former and one-third on account of the latter. Lastly, though the principle that profits at a reasonable rate must be charged to a mortgagee in possession who is not able to show what he had actually received in any year, is common to both the Acts, there is this difference between the exceptions contained in S. 13A of the *D. A. R. Act* and S. 44 of *this Act*, that whereas in the former abatement is allowable only on proof of failure of crops in any year it is allowable under the latter on proof of a certain amount of suspension or remission of rent or land-revenue having been granted by Government in that year under S. 84A of the *Bombay Land Revenue Code, 1879*.

(7) In S. 15A of the *D. A. R. Act*, it is provided that the court shall not refuse to pass a decree for redemption in favour of a mortgagor on the ground that the time for the repayment of the principal money as agreed upon has not arrived or that the mortgage-debt has not been completely discharged or both. This provision was appropriate to a remedy by way of a suit for redemption of a mortgage. It could not be imported in the same words in this Act because of the difference in the nature of the remedy by way

of an application for the adjustment of all debts due by a debtor. The underlying principle has however been adopted in the proviso to S. 54 (2) (i) as regards the time for the delivery of possession of a mortgaged property to a debtor.

(8) The principles on which the provisions in S. 15B (1) and (2) of the *D. A. R. Act* are based have been accepted while framing S. 54 (2) (b), (e), (f), (g) and (k) of this Act. Those on which S. 15 (B) (3) and (4) of the old Act are based are however nowhere acted upon in this Act because they are inconsistent with the policy underlying this Act.

(9) Under S. 15D (1) and (2) and S. 16 of the *D. A. R. Act* an agriculturist must file separate suits for taking accounts of his secured debts and unsecured debts due to individual creditors and under SS. 15B (3) and (4) and 17 of that Act he can get decrees for redemption passed in those very suits. Under S. 17 of this Act however he has only to make one application for an adjustment of all his debts and supply the particulars required by S. 22 (1) and a common award for the payment of all his debts, secured and unsecured, to whomsoever due, would follow automatically if no settlement has been made in the meanwhile. Moreover it is at the discretion of each Judge taking cognizance of a suit under S. 15 D or S. 16 to fix the amount and number of instalments. It is therefore likely that there may be a conflict of interests between several creditors especially when the debtor's means are not sufficient to pay off all of them. Here on the other hand they are fixed subject to the limits laid down in S. 54 (2) (h) in view of the total amount of the liabilities of the debtor, the total value of his property attachable under a decree and the net annual income of the productive portion thereof and consequently no difficulty is likely to arise as to recovery except in case of a failure of crops. Again in the case of unsecured debts it happens not infrequently that a debtor fraudulently alienates his attachable property. This Act by S. 65 renders invalid any such alienation made during the course of a proceeding or after an award is passed until the debts ordered to be paid are not paid in full, unless made with the permission of the Provincial Government. The interest of a resource society and an authorised person who advances loans under S. 78 of this Act to a debtor, who is a party to a proceeding or against whom an award

has been made, for financing crops, are further safeguarded by the prohibition against an alienation or encumbrance of even the standing crops or the gathered crops of the debtor's lands without their permission, contained in S. 77. Lastly, the questions whether a transaction though apparently that of a sale was really in the nature of a mortgage and whether the sale-deed should or should not be set aside as fraudulent cannot be decided in a suit under S. 15D of the *D. A. R. Act* according to the rulings in *Krishnaji v. Sadanand*<sup>9</sup> and *Chandabhai v. Ganpati*<sup>10</sup> but the Board before which an application under S. 17 of this Act is made has power under SS. 45 and 49 respectively read with S. 6 to decide any of those questions.

(10) There is no section in this Act corresponding to S. 20 of the *D. A. R. Act* but it was clearly unnecessary in view of the provisions of S. 54 (2) (h) and in view of the fact that there is no possibility of an award being made *ex parte* against a debtor under this Act.

(11) There is also no section in this Act corresponding to S. 21 of the *D. A. R. Act*. Under S. 63 an award after being registered is executable as a decree of the Court registering it but it must be transferred to the Collector for that purpose. After transfer, the Collector has to Act under SS. 69 to 72 of and Schedule III to the Code of Civil Procedure, 1908. There is now no scope for issuing a warrant for the arrest and imprisonment of an agricultural debtor in execution of an award-decree.

(12) There is also no provision in this Act corresponding to S. 22 of the *D. A. R. Act*, which exempts the immovable property of all agricultural debtors from attachment and sale in execution of a decree against him unless it had been specifically mortgaged for the repayment of the debt to be recovered. On the contrary the whole of the attachable movable as well as immovable property of a debtor except such as may have been specifically mortgaged for the repayment of a particular loan, can be available to the unsecured creditors of a debtor whose claims have been awarded under this Act because S. 65 of the Act prohibits an alienation of any property of a debtor who is a party to a proceeding or against whom an award has been made except with the sanction of the Provincial Govern-

ment and as regards the claim of a resource society or an authorised person who has advanced loans for the financing of crops there is the additional prohibition in S. 77 against an alienation of or encumbrance on the standing crops or the produce of the land of such debtor except with the permission of any of them to whom he may be indebted under the award.

(13) For the same reason the provisions of S. 22A of the *D. A. R. Act* have not been re-enacted in any part of this Act. Under SS. 68 to 72 of the Civil Procedure Code read with Schedule III to the Code, and the rules made thereunder the Collector has ample powers to do what he thinks proper in the case of sales of lands of agriculturists which are always made through him in this province. In the case of sales of any portion of the property of a debtor under this Act being ordered by the Board or the Court under S. 66 of this Act at any intermediate stage of a proceeding or an appeal there is a provision in that section itself to get such sales made through the Collector and with respect thereto he has the same powers as under *Bombay Land Revenue Code, 1879* by virtue of Rule 29 (2) made under the said section.

(14) Chapter IV of the *D. A. R. Act* contains 14 sections relating to insolvency. It grants some special facilities to an agricultural debtor to make himself free from his liabilities in case he thinks they are unbearable. The provisions of this chapter were never subsequently extended to any part of the province and therefore they apply only to the agricultural population of the four districts of Poona, Satara, Sholapur and Ahmednagar. And as even there it is necessary for an agriculturist to make an application to the court for being declared to be an insolvent under the said chapter, and as the rural population as a class is disinclined to make such an application under the *D. A. R. Act*, the said provisions have become a dead letter. The Royal Commission on Agriculture having been convinced of that had recommended special legislation on this subject suited to the peculiar rural conditions in each province. The Bombay Banking Inquiry Committee backed up by the Indian Banking Inquiry Committee had also recommended such legislation. The Bombay Legislature has given effect to that recommendation so far as giving insolvency relief to debtors under this Act is concerned by incorporating provisions relating to insolvency in



SS. 68 to 72 which constitute Chapter IV of this Act. The debtors in those areas for which D. A. Boards are established will get their benefit.

The points of difference between those provisions and those of Chapter IV of the *D. A. R. Act* (SS. 25 to 33) are these :—

(a) Under S. 25 of the *D. A. R. Act* an agriculturist has to make an application to the Court of the Subordinate Judge within the local limits of whose jurisdiction he may be residing and in order to be qualified to make one, he must be indebted to the extent of Rs. 50 at least. Under S. 68 of this Act it is incumbent upon the Board to which an application under S. 17 or 23 has been made to make an order of adjudication if it is convinced for any reason whatever that the debts due from the debtor cannot be repaid in annual instalments not exceeding 12 and discretionary with the Court to which an award is transmitted for registration to make one if it is convinced that two consecutive or any three instalments cannot be recovered by the sale of the debtor's moveable property.

(b) There are no provisions in this Act as to the appointment of anybody as a receiver of the debtor's property or as to putting the Collector in management of his immovable property or as to directing him to lease out such property for the benefit of the debtor's secured or unsecured creditors as in SS. 27 and 29-30 of the *D. A. R. Act* but S. 68 (3) straightway directs the Board or the Court which has made the order of adjudication to direct the sale of one-half of the attachable and saleable property of the debtor free of all encumbrances. And S. 69 provides that all the further procedure in the matters shall be regulated by the provisions of the Provincial Insolvency Act, 1920 as modified by those of Chapter IV of this Act. The latter are so framed as to keep for the maintenance of the debtor and his family sufficient land not liable to be sold.

(c) The proceeds of the sale are to be distributed under this Act amongst all the creditors, secured, unsecured and preferential, according to the order of priority laid down in the proviso to S. 54 (2)(g).

(15) The Village Munsiffs who are appointed under Chapter V of the *D. A. R. Act* have very limited jurisdiction and that too

for trying suits filed by individual creditors. The Debt Adjustment Boards to be appointed under S. 4 of this Act have unlimited jurisdiction and once an application is made to a competent Board under S. 17, whether by a debtor or a creditor of a debtor, every liability of his comes under its power of adjustment. Moreover special Boards competent to deal with the cases of any particular class of debtors can be appointed under the said section of this Act. There is no such provision in the *D. A. R. Act*.

(16) The whole of Chapter VI comprising SS. 38 to 49 of the *D. A. R. Act* has become practically a dead letter since the abolition in 1913 of the posts of Conciliators created under it, owing to the dissatisfaction created in the minds of the people who had to deal with them. As explained in Section V above it is the policy of this Act also to encourage and help private settlements of the disputes, if any, between debtors and creditors but for the cases in which attempts made in that direction fail, it has provided a special machinery for the achievement of results which the legislature thought to be reasonable instead of leaving the parties free to resort to the cumbrous and costly procedure of regular suits.

(17) The *D. A. R. Act* had, by SS. 50 to 54 comprised in Chapter VII thereof, provided for a good and effective machinery for the supervision and control of the work of the Subordinate Judges giving effect to the provisions contained in Chapters II and III of the Act, of those of the Village Munsiffs working under Chapter V thereof and of that of the Conciliators so long as they were there working under Chapter VI thereof. For some years there was a special Judge working under the superintendence of the High Court. Then there were the Inspecting First Class Subordinate Judges working under the superintendence of the District Judges. Since the abolition of the posts of the Conciliators and the Inspecting Subordinate Judges, the District Judges assisted by the First Class Subordinate Judges exercise control over the officers of the lower grades. Moreover all such officers have limited powers. As compared with them the Boards set up under this Act have very wide, discretionary and in several matters absolute powers. In view of that and in view of the facts that the remedy provided by the Act is to be made available to a very large number of areas and it is the declared intention of Government to extend the Act to the whole

Province, the Amending Act of 1945 should, as recommended by the Review Committee, have provided for a better controlling machinery than that provided by S. 15 thereof. The District Judge is in many districts an overworked official. He would further have to attend to awards and appeals made under this Act. In order to assist him in the disposal of even his usual civil and criminal work one or two Assistant Judges are required to be permanently maintained at the head-quarters of the heavy districts. The work of control over the Board within the limits of his jurisdiction is therefore likely to drift into routine work to be attended to by his office-staff and consequently the Boards are likely to feel that they are absolute masters of the situation except in this that a few of their awards, decisions and orders are liable to be appealed against. In order therefore that this new machinery may not fall into disrepute like that of the Conciliators under the old Act, steps must be taken as early as practicable for the appointment of divisional supervising officers and a Debt Adjustment Commissioner at the provincial capital.

(18) The subject-matter of Chapter VIII of the D. A. R. Act namely, the registration of documents made by agriculturists is outside the limited scope of this Act. Moreover no Village Registrars have been appointed or allowed to continue to work since 1910. Chapter VIIIA again prescribes only a special mode for the registration of compulsorily registerable documents when executed by agriculturists. It is confined in its operation to the original four Deccan districts only. There could not therefore be anything in this Act corresponding to the provisions with respect thereto.

(19) The subject-matter of Chapter IX of the D. A. R. Act, namely "Receipts and Statements of Accounts" is also outside the limited scope of this Act. It is true that in order that the good effect produced by the operation of its provisions may not be swept away in course of time and the debtor while being freed from the clutches of one set of money-lenders may not fall into those of another, it was necessary to pass and put into operation simultaneously the *Money-lenders Bill* of 1938 which had been drafted, referred to a Select Committee and circulated for opinion. This could not be done before the Provincial Legislature was suspended in 1939. The Provincial Government has however been empowered by S. 78

of this Act to authorise any person to advance loans to debtors who are parties to any proceeding or whose debts have been adjusted, and to impose conditions on the exercise of such authority. The Government of Bombay has accordingly made Rules Nos. 38 to 40 and prescribed Forms Nos. 22 to 24 in the exercise of that power. These have been explained in details in the commentary on the said Rules. Suffice it here to say that the exercise of the authority is thereby restricted to the granting of loans for productive purposes only namely the financing of crops and that the authorised persons are required to keep accounts in a prescribed form, pass receipts or furnish pass-books, and periodical statements of accounts. Under Chapter IX of the *D. A. R. Act* it was not compulsory for creditors to keep accounts but under the said rules made under S. 78 of this Act it is. Those rules embody as far as possible the principles on which the provisions of Chapters III and IV of the *Money-lenders Bill*, 1938 were based. This however leaves the debtors whose debts are or are likely to be adjusted without any authorised source of monetary help for unproductive purposes, such as marriages of children, obsequies of deceased members of their families &c. It cannot be believed that such exigencies would not arise during the maximum period for which proceedings under this Act would last and the awards would remain unsatisfied. It is therefore not impossible that they would continue to borrow money at exorbitant rates of interest on their personal security which is not affected by any of the restrictive provisions in the Act and consequently the object which the legislature had in passing this Act would be frustrated. It would be idle to hope that they would not find lenders for there is a growing class of such persons who depend for the recovery of their dues more on their coercive methods than on the legal machinery provided for that purpose.

(20) The points of difference between the provisions of S. 68 of the *D. A. R. Act* and SS. 67 and 67A of the present Act to which it corresponds have been set out in the commentary on the latter. Chapter X of the *D. A. R. Act* contains one more section namely, S. 69, which authorises a Subordinate Judge trying a suit or proceeding to which a poor agriculturist is a party not represented by a pleader or an advocate and is opposed by one appearing by a pleader or an advocate to direct the Government pleader or any other fit

and willing person to appear on behalf of the agriculturist with his consent. The section is silent as to how the Government pleader or other person is remunerated. But the practices in such cases, as known to this author, is for the Judge to call upon the creditor to deposit the costs of engaging him and to give him credit for them in his account with the agriculturist. It would have been proper if the principle underlying this section had been accepted while drafting the original or the amending Act because the Debt Adjustment Boards have very wide discretionary powers to decide important questions of law and fact. Instead of doing so the Provincial Government has appointed Debt Relief Assistants in some 20 areas for assisting Backward Class debtors in preparing, applications filing statements and watching the proceedings on their behalf. There is no statutory provision supporting such appointments and the poor and illiterate debtors in the other areas are at a disadvantage in that respect.

(21) Section 70 of the *D. A. R. Act* relates to a matter outside the scope of this Act and is not therefore found re-enacted in any form in any part thereof.

(22) Section 71 of the *D. A. R. Act* exempts agriculturists from the operation of the last clause of S. 258 of the *Civil Procedure Code, 1859* which corresponds to Or. XXI, r. 2 (3) in Schedule I to the *Code of 1908*. This enables the agriculturists to prove uncertified payments in execution proceedings. It is in force throughout this province. There seems to be no such specific section or portion of a section in this Act. But since S. 42 (2) (j) directs a Board to give credit for all payments made during the course of the transactions whose accounts are to be made up, it is implied that the Board must give credit for even such payments, if proved to its satisfaction. What it cannot take notice of are settlements for registering and certifying which no application has been made within thirty days under S. 23 of this Act.

(23) Section 71A has, as already noticed, been re-enacted in a modified form in S. 42 (2) (e) of this Act.

(24) Section 74 of this Act by applying the provisions of the *Indian Limitation Act, 1908* to claims cognizable under this Act, except as otherwise provided in it, sweeps away the special provisions of S. 72 of the *D. A. R. Act* as to cases falling under this Act.

(25) Section 73 of the said Act has already been repealed and 73A goes with SS. 22 and 29 thereof corresponding to which there could be no sections in this Act consistently with its scheme.

(26) There is no section in this Act, corresponding to S. 74 of the *D. A. R. Act*. Section 7(1) of the former extends to this Act the provisions of the *Civil Procedure Code* as regards some specific matters only but Rule 35 of the Rules made under S. 83 of this Act corresponds to the said sections of the *D. A. R. Act*.

(27) S. 74A of the *D. A. R. Act* exempts co-operative credit societies from the operation of the whole of the Act except SS. 2 and 21. Under the present Act they are outside the jurisdiction of the Boards to the extent mentioned in S. 3 thereof.

(28) Corresponding to SS. 75 and 76 of the *D. A. R. Act* there is S. 83 of this Act. But there is this peculiarity in the latter that besides the general power to make rules for the purpose of carrying into effect the purposes of the Act it confers a special power to make rules for several specific purposes mentioned therein.

(29) The object of the legislature in passing this Act being to provide a remedy for putting an end to the chronic indebtedness of the agriculturists as a whole and not merely to grant relief in individual cases it is but natural that there should be certain provisions therein for which we can find no parallels in the old Act. The matters dealt with in such provisions and the sections in which they are embodied are as under :—

- (1) Duty of every creditor and debtor to supply information on certain points on being served with a notice (S. 19);
- (2) Duty of every applicant to file along with his application under S. 17 a statement containing as full particulars as possible as to the assets and liabilities of the debtor (S. 22);
- (3) Duty of parties to get every settlement of a debt made after the establishment of a competent Board recorded and certified by it (S. 25);
- (4) Duty of the Boards to call for all the known information as to the assets and liabilities of a debtor from all his

creditors if he happens to be the applicant and from him and the other creditors if one of the latter happens to be the applicant ;

- (5) Duty of parties to make applications under S. 17 or S. 23 to a competent Board on pain of the debts existing at the date of the establishment of the Board being deemed to have been discharged after particularly stated periods (S. 32) ;
- (6) Duty of the civil and revenue courts to transfer all pending suits and applications for execution and proceedings relating to the recovery of debts to competent Boards (S. 37) ;
- (7) Duty of the Boards to cut down by certain percentages both the principal and the interest in the case of debts which had originated before particular dates including even those which have been subjected to a scrutiny by competent courts and whose amounts have been held by them to be due and payable [S. 42 (2) (e) and S. 46] ;
- (8) Duty of, even the Provincial Government as represented by the Collector, the local authorities, scheduled banks and co-operative societies to inform the competent Board what amounts are due to them from the debtor and of the first, third and the last to inform how much remission they are prepared to give thereout (S. 47) ;
- (9) Duty of the Board to ascertain the value of the whole of the property of a debtor and his paying capacity according to certain prescribed rules and further to scale down the debts *pro rata* according to prescribed rules, if necessary (SS. 48 to 52) ;
- (10) Duty of the Board to pass a single consolidated award as regards the debts thus scaled down and those ascertained from Government, local bodies and others under S. 47, and to ascertain before fixing the amounts of instalments to be paid to them according to a fixed order of priority, the net annual income of the debtor according to fixed principles (S. 54) ;

- (11) Discretion to the Board to frame a scheme and pass an award accordingly for the payment by a bank of the debts of a debtor as further reduced with the consent of the creditors in consideration of its passing Government-guaranteed bonds to them in cases in which the total amount of the debts found due exceeds 50 per cent of the value of the debtor's immovable property and its duty to do so when it does not so exceed, unless the creditors choose to demand cash payment, as they are entitled to do (S. 55);
- (12) Power of the Board or the Court to order the sale of a portion of a debtor's property for the liquidation of his debt or a portion of it if it is to his interest to do so, at any stage of the proceeding before it (S. 66);
- (13) Power of the Board or the Court to declare a debtor to be an insolvent and proceed further under the provisions of the *Provincial Insolvency Act, 1920* as modified by Chapter IV of this Act although neither the debtor nor any creditor may have moved it for that purpose (S. 68);
- (14) Disability of a debtor who is a party to a proceeding under this Act or against whom an award has been made to alienate or encumber even his unencumbered property without the permission of Government and the produce thereof, gathered or ungathered, without the permission of certain classes of creditors (SS. 65 and 77);
- (15) Disability of a debtor who is a party to a proceeding or against whom an award has been made under this Act to borrow money except from authorised persons who can advance it only on certain prescribed conditions (S. 78).
- (16) Repeal, subject to reservation as to vested rights, of an old Act in specific areas made with a view to grant some measure of relief to particular class of debtors, as to transactions entered into after the date of commencement of the operation of certain sections of this Act but the temporary continuance in those areas for those entered into before it in the case of debtors who are not the object of special protection.



It will have been seen from the above that the present Act departs considerably in the matters of the quantity and quality of the relief intended to be given to agricultural debtors from the principles on which the *Dekhan Agriculturists' Relief Act, 1879* had been originally framed and on which it had been amended from time to time prior to 1928. In that year appeared the Report of the Royal Commission on Agriculture. It suggested some reforms in legislation on provincial lines after an inquiry into the peculiar conditions of each province. That Commission was very soon followed by the Indian Banking Inquiry Committee the terms of whose reference were wide enough to admit of an inquiry on the above lines in connection with the conditions of agricultural finance. It accordingly appointed Provincial Sub-Committees for making it individually. The reports of those sub-committees appeared between 1929-30 and that of the Central Committee in 1931. While these Committees were working the *Punjab Regulation of Accounts Act, 1930* was passed. This was recommended to the other provinces for partially determining their lines of action, for it did not touch the problem of existing indebtedness of the rural population. But the Committees made several other recommendations for its solution according to the local conditions in each Province. Proceeding upon these, several Provincial legislatures passed debt relief enactments suited to their individual requirements from 1933 onwards.

Those enactments looked at from the standpoint of the Indian Constitution fall into two classes, namely (I) those passed before Part III of the Constitution Act, 1935 relating to the grant of Provincial Autonomy came into operation i.e. before 1st April 1937 and (II) those passed after the said date.

### I. Debt Relief Enactments passed before 1st April 1937 :—

(a) *Central Provinces (and Berar)*.—The first province to take legislative action with a view to tackle it was the Central Provinces (and Berar). It took the form of the *Central Provinces Debt Conciliation Act, 1933*. Although in appearance and in its declared object

amicable settlement between them and their creditors" there were several elements of statutory compulsion therein, for, the term "debt" as defined in S. 2 (e) thereof included liabilities incurred "under a decree or order of a civil court or otherwise"<sup>11</sup>, "according to S. 8 (2) every debt with respect to which no statement was submitted by a creditor within 2 months as required by a notice under S. 8 (1) was to be deemed to have been discharged unless it was shown that there was a sufficient cause for non-compliance"<sup>12</sup>, S. 9 imposed a penalty for the non-production of a document called for by a Debt Conciliation Board, without a reasonable excuse<sup>13</sup>, S. 11 made an agreement as to settlement arrived at by a debtor with his creditors representing 40 per cent. of his total liabilities binding on his other creditors, S. 15 (1) authorised a Board to grant a certificate to a debtor whose offer, fair in the eye of the law, had been rejected by one or more of his creditors and S. 15 (2) permitted a civil court to take such a certificate into consideration in a subsequent suit with a view to see whether costs or interest at a rate higher than 6 per cent. should or should not be allowed to the creditor guilty of such rejection, S. 15 (3) rendered unexecutable a decree of a civil court relating to a debt incurred prior to the registration of an agreement, if any, arrived at in such a proceeding, until the terms of the agreement had been fully complied with, S. 16 debarred the civil courts from entertaining suits and execution proceedings relating to matters pending before a Board<sup>14</sup>, S. 17 rendered alienation of a debtor's property made during the pendency of an application or the subsistence of an agreement void<sup>15</sup>, S. 18 prohibited appeals and revision applications against every order of a Board<sup>16</sup> S. 20 prohibited a party from appearing before a Board by a legal practitioner<sup>17</sup>, S. 21 directed the suspension of all

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11. Cf. S. 2 (5) of this Act containing a definition of the same term.

12. Cf. S. 32 of this Act so far as it relates to non-compliance with the notice served under S. 31 thereof.

13. The provision in S. 43 of this Act on the same point is far milder than that.

14. That the Bombay Act is milder in this respect will appear from the commentary on S. 85 (2).

15. Cf. S. 65 of this Act.

16. Contrast with this S. 9 of this Act which allows appeals against certain awards and certain decisions and orders of the Board and does not expressly prohibit revision applications.

17. Cf. S. 67 of this Act.

pending suits and applications until an application under S. 4 was disposed of<sup>18</sup>, and S. 26 (3) permitted the Provincial Government to make a rule which would render punishable with fine a breach of any of the rules and further authorised it to impose a fine of Rs. 10 per day for every continuing breach of a rule; secondly, the said definition of a "debt" in S. 2 (e) of the Act excluded from its connotation "land revenue or anything recoverable as an arrear of land revenue", thus keeping outside the purview of the Act such of the claims of the Provincial Government and local authorities as were enforceable under the revenue law of the province<sup>19</sup>, S. 22 of the Act not modifying the provision; thirdly, the definition of the term "debts" given in S. 2 (f) had been so worded as to debar an agriculturist who did not owe more than Rs. 150 in all from making an application under S. 4 and to allow the benefit of the provisions of the Act to all persons who could show that the income derived by them from agricultural sources is the main source of their livelihood as under S. 2 of the *D. A. R. Act*; fourthly, S. 4 not only fixed the maximum limit of the amount of the total liabilities of a debtor for the purpose of giving relief at Rs. 25,000<sup>20</sup> but further empowered the Provincial Government to fix even a still larger indeterminate limit for any specified local area<sup>21</sup>; fifthly, in case of default on the part of a debtor in paying any instalment, S. 13 gave the Deputy Commissioner power to recover it as an arrear of land-revenue or to certify that the agreement had ceased

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18. Contrast S. 37 of this Act which directs a transfer of all pending suits applications and proceedings.

19. Contrast with this SS. 3, 22 (3), 47, 54 (2) (g) and (h), 63 proviso (2), 66 and 68 of this Act according to which although such claims are not adju-dicable by the Boards, they are to be given a priority over other debts according to a fixed order and do not cease to be recoverable by the usual revenue process. The Provincial Government and co-operative societies are expected to make part remissions thereof and are bound by the orders if any, which the Board or the Court may pass as to the amounts of instalments payable to them and as to the necessity to sell off any portion of a debtor's property for the liquidation of any portion of his liabilities and by the decision of any of them as to whether in the particular circumstances of his case a debtor should or should not be declared to be and be treated as an insolvent for the purpose of recoveries

20. Contrast with this S. 26 of this Act which lays down a maximum limit of Rs. 15,000 and does not give any discretionary power to the Provincial Government.

21. Contrast again SS. 2 (6) and 26 of this Act which impose such conditions that only bona fide agriculturists can get the benefit of the Act

to subsist<sup>22</sup>; sixthly, if no agreement as required by S. 11 is arrived at the Board must dismiss the application according to S. 14 and if the offer made by the debtor was fair it can further grant a certificate to him which can be used against a creditor in a subsequent suit in a civil court.<sup>23</sup>

This Act having been drafted by some one not properly qualified for the task was soon found to be defective and to stand in need of amendments. It was therefore amended in the next year by C. P. Act I of 1934. But even then no thorough inquiry was made as to all the defects which existed therein. It was therefore required to be amended for the second time by C. P. Act XIV of 1935. Even then it did not occur to the officer concerned to make such an inquiry. Therefore in the same year it was required to be amended again by C. P. Act XXVIII of 1935. It was again similarly required to be amended twice in 1936 by C. P. Acts XV and XXXIII of 1936 and twice again in 1937 before 1-4-37 by 2 C. P. Acts of that year, the second of which was numbered XVII of 1937. The effects of these amendments will be found noted in the commentary on Schedule II to Ordinance No. XI of 1945.

The Central Provinces legislature had, besides the above, passed before 1st April 1937 several other Acts intended to give relief to debtors generally and to put restraints on the method of business of the professional money-lenders which formed the foundation of the indebtedness. Those Acts which fall in the first category are :—

1. The Usurious Loans (C. P. Amendment) Act, 1934 (C. P. Act XI of 1934).
2. The Provincial Insolvency (C. P. Amendment) Act, 1936 (C. P. Act II of 1936).
3. The Central Provinces Protection of Debtors Act, 1937 (C. P. Act IV of 1937).

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22. Contrast S. 63 of this Act which makes an award registered by a Court under S. 62 thereof executable through the Collector of the district as a civil court decree.

23. The Bombay legislature has by SS. 19, 23, 24 and 25 encouraged purely private settlements of debts but rejected the method of conciliation and granting a certificate which had been tried under Chapter VI of the D. A. R. Act and found to encourage corrupt practices.

4. The Central Provinces Reduction of Interest Act, 1936 (C. P. Act XXXII of 1936).

That which falls in the second category is :—

1. The Central Provinces Money-lenders Act, 1934 (C. P. Act XIII of 1934).

Like the Debt Conciliation Act this Act too was amended several times by the following enactments, namely :—

1. The Central Provinces Money-lenders (Amendment) Act, 1936 (C. P. Act XIII of 1936).
2. The Central Provinces Money-lenders (Amendment) Act, 1937 (C. P. Act XIX of 1937).
3. The Central Provinces Money-lenders (Amendment) Act, 1937 (C. P. Act XXIV of 1937).

(b) *Punjab*.—The second province to move in that direction was the Punjab. One of the Acts passed with respect thereto by the Provincial legislature there was the *Punjab Relief of Indebtedness Act, 1934*. It was not confined in its operation to holders of land only, for the definition of the term “debtor” contained in S. 7 (2) thereof applied to an indebted person “who earns his livelihood mainly by agriculture and is either a land-owner or a tenant of agricultural land, or a servant of a land-owner or of a tenant of agricultural land” or “who earns his livelihood as a village menial paid in cash or kind for work done in connection with agriculture” and to several more persons by virtue of a proviso and explanations added thereto. But so far as the policy followed for devising means for putting an end to indebtedness was concerned it was the same as in the Central Provinces and Berar, namely one authorising the Provincial Government to set up Debt Conciliation Boards “for the purpose of amicable settlement between debtors and their creditors” for certain areas to be determined by that Government. In place of the maximum limit of Rs. 25,000 that section fixed Rs. 10,000 as the maximum but like the C. P. legislature it empowered the Provincial Government to fix a higher one by rules. Similarly, like that legislature this too introduced elements of compulsion by providing in S. 7 (1) that “debt” shall include a debt due under a civil court decree, in S. 13 (2) that if any creditor failed to file a statement of accounts as required by sub-section (1) of that section within the prescribed

period the debt due to that creditor was to be deemed to have been extinguished subject to certain exceptions, in S. 20 that the Board shall grant a certificate to a debtor whose fair offer for a settlement to which creditors representing 40 per cent. of his liabilities had agreed, had been rejected and that a civil court in which a subsequent suit is instituted by that creditor may disallow interest and costs to him if the certificate is produced before it, in S. 21 and 25 that no suit or proceeding relating to a claim which is the subject-matter of an application to a Board, shall be entertained by a civil court, and that pending suits and applications shall not be proceeded with if an application or an agreement made under an application is in force, and in S. 22 that no appeal or revision application shall lie against any order of a Board. Besides providing this special remedy by S. 3 thereof it amended S. 10 (1) of the *Provincial Insolvency Act, 1920* so as to reduce the minimum debt-limit to Rs. 250 and S. 74 thereof so as to permit the adoption of a summary procedure in cases in which the value of the assets is Rs. 2000 instead of Rs. 500, and S. 3 of the *Usurious Loans Act, 1918* so as to make it more stringent and effective.<sup>24</sup> Lastly, by S. 30 it rendered illegal the allowance by any civil court after the commencement of this Act of more interest than is allowable under the Rule of Damdupat, which was made applicable to all suits irrespective of the community of the parties, with this difference that the rule was to be applied to the amount of interest due up to the date of the commencement of the Act in the case of suits filed after it and to that due upto the date of the decree in the case of debts incurred after the commencement of the Act, by S. 33 amended S. 1 (3) (a) and (b) of the *Redemption of Mortgages (Punjab) Act, 1913* and by SS. 34 to 37 introduced a more powerful check on the power of civil courts to order the arrest of a judgment-debtor in satisfaction of money-decrees, amended S. 60 (1) (c) of the *Civil Procedure Code, 1908*, repealed Or. xxi, r. 2 (3) in Schedule I to that Code and imposed a penalty for making a false claim as to the principal of a debt. The second Act passed by the same legislature towards the same end was the *Punjab Debtors' Protection Act, 1936*, the principal features of the provisions wherein were a compulsory transfer

24. The Bombay Banking Inquiry Committee had ruled out the possibility of an amendment of U. L. Act, 1918 serving any useful purpose (Vide its Report Vol. I, para. 24) at pp. 183-84).

of all execution proceedings involving an attachment of agricultural lands to the Collector, for whose guidance certain rules were laid down, an appeal from his orders lying to the Commissioner only,<sup>25</sup> ancestral property being exempt from all liability, standing crops also being exempt from liability to attachment and sale, certain decrees not being executable after six years except when force or fraud preventing execution is proved and a creditor being in all civil cases liable to prove the consideration for each loan unless he had a receipt in writing or had got its payment attested by a Sub-Registrar.<sup>26</sup>

(c) *Bengal*.—The third province to legislate on this subject after the publication of the said Reports was Bengal. The legislative measure there passed in 1935 was the *Bengal Agricultural Debtors Act, 1935*, (Ben. Act VII of 1936). In most of the essential particulars this Act has been framed on the lines partly of the *Central Provinces Debt Conciliation Act, 1933* and partly of the *Punjab Relief of Indebtedness Act, 1934*. Thus S. 3 thereof provides for the appointment by the Provincial Government of Debt Settlement Boards for specified local areas; according to S. 2 (8) "debt" includes a debt payable under a decree or order of a civil court but does not include any debt recoverable as a public demand and a debt due to a scheduled bank under the *Reserve Bank of India Act, 1934*<sup>27</sup>; proceedings before the said Boards are to be initiated according to S. 8 by an application made either by a debtor or a creditor: if a Board is specially empowered in that behalf and if creditors representing 40 per cent of the total liabilities of a debtor consent to a settlement, the Board can, under S. 19 (1) (b) impose it on the remaining creditors even without their consent; if a creditor had rejected an offer, which as tested by the principles laid down in the statute, was a fair one in the eye of the Board it can under S. 21 grant a certificate to the debtor concerned stating that fact and such a certificate would have an adverse effect on the

25. Cf. with this the provisions of the amended S. 63 of Bom. Act XXVIII of 1939 and S. 41 of Bom. Act VIII of 1945.

26. Most of these expedients had been tried in Bombay by the D. A. R. Act and had been found inadequate both as to the quantity and quality of the relief required to be given to agricultural debtors.

27. Under the Bom. Act as now amended the debt due to a scheduled bank is in the same category as that due to Government, a local authority or a co-operative society [see SS. 2 (11A), 3 and 47].

claim of the creditor; if the debts cannot be reduced by settlement to an amount which can be repaid within 20 years<sup>28</sup>, a Board specially empowered in that behalf can under S. 22 (1) declare the debtor to be an insolvent and reduce his debts to such an amount and if that too is not practicable it can put all his property to sale and arrange for the payment of his debts subject to the provisions of S. 24 (4); execution-sales are under S. 22 (2) (3) and (4) to be conducted by a certificate officer in the manner provided by the *Bengal Public Demands Recovery Act, 1913* leaving 1/3rd of the land in the debtor's possession or at least 1 acre of land and his dwelling-house, unless specifically mortgaged, untouched; the certificate officer has under S. 28 discretion to grant extension of time in fit cases; under S. 34 suits and proceedings pending in any civil or revenue court are to be stayed and must abate if the Board's decision is against the creditor; under S. 35 certain decrees and certificates which could have been granted under the *Bengal Public Demands Recovery Act, 1913*, cannot be passed and granted with respect to claims cognizable by a Board and under S. 36 certain decrees including those obtained on documents called for but not produced before a Board are to be treated as nullities; under S. 46 legal practitioners are debarred from appearing before a Board unless specially permitted by it and under S. 47 registration of awards is to be made and certificates of discharge are to be granted by the Board. This Act has however certain peculiar features, namely (1) that instead of for one year as in the case of the C. P. Act or for three years as in the case of the Punjab Act, the appointment of the Boards under S. 8 (1) of this Act is for five years, (2) that no maximum or minimum limit has been fixed for the pecuniary jurisdiction of the Boards, (3) that it contains in S. 40 provision for making appeals against the decisions of the Boards, unless passed by consent, to a judicial officer of experience, (4) that in S. 43 it provides for the exercise of a direct control over the work of the Board through a special officer and (5) that by S. 45 it excludes the operation of the provisions of the *Indian Evidence Act, 1872* and the *Civil Procedure Code, 1908*, except as otherwise provided therein.

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28. The maximum number of instalments for the payment of the debts of an agriculturist debtor according to S.54 (2) (h) of the Bom. Act is 12 and if the debts are not so payable he is to be declared an insolvent according to S. 68 of the said Act.



(d) *Assam*.—The fourth Province to tackle the problem of rural indebtedness before 1st April 1937 was that of Assam. In 1934 it placed on its statute-book an Act for establishing an effective control over the business of money-lending called the *Assam Money-lenders Act, 1934* (Assam Act IV of 1934). It is a small Act in 14 sections somewhat on the lines of the *Punjab Regulation of Accounts Act, 1930*. Thus by S. 3 it imposes a fine upto Rs. 200 for stating a larger amount in a bond than had been actually advanced. By S. 4 it prohibits the courts from allowing compound interest and enforcing a default clause therein and gives power to them to allow simple interest in their places. S. 5 makes it illegal to add any amount to that of a loan on account of costs, charges and expenses incurred in connection with the advancement of money except those incurred in going to inspect a property to be mortgaged. SS. 6 and 7 make it obligatory on money-lenders to keep accounts of their dealings and to give information with reference thereto and supply copies thereof to the debtors by making it impossible to sue for or recover the principal amount or interest until the default continues and prohibiting the allowance of interest for the period of default. S. 8 authorises the courts to presume that interest is excessive and the transaction substantially unfair for the purpose of the application of S. 3 of the *Usurious Loans Act, 1918*, when the interest stipulated for or charged exceeds 12½ per cent. in the case of secured loans and 18½ per cent. in that of unsecured ones, and leaves the courts free to draw such inferences even in those cases in which the rates are less than these if other circumstances justify them. S. 9 makes it illegal to recover as interest more than an amount equal to that of the principal. S. 11 prohibits money-lenders from publishing advertisements relating to their business and employing agents or canvassers on pain of being prosecuted and sentenced to imprisonment upto 3 months and or a fine upto Rs. 300 and of being deprived of the right to recover a loan advanced on employing such means. Lastly, S. 12 empowers a court coming to know that a money-lender has been guilty of a fraud or of the contravention of any of the provisions of this Act, to debar him from plying his trade for a certain period. A party aggrieved by

any such order is given a right of appeal to a higher court. This Act has one more section providing for a cheaper remedy than a regular suit for the payment of a simple debt, which is of the same nature as that provided for in the case of a mortgage-debt in S. 83 of the *Transfer of Property Act, 1882*.

This legislature does not seem to have passed any enactment before 1st April 1937 for the relief from their existing indebtedness of agricultural debtors expressly and exclusively.

(e) *Madras*.—The last Province to take legislative action for the relief of agricultural debtors before 1st April 1937 was Madras. The Act which it placed on its statute-book in this connection was the *Madras Debt Conciliation Act, 1936*. It was largely modelled on the similar Act of the Central Provinces legislature above-mentioned. That being so, the provisions as to the appointment of Debt Conciliation Boards, as to procedure by application by either party, and as to persuasion backed up by certain penalties or disabilities of a civil nature, such as the debt due to a creditor being liable to be deemed to have been discharged if he does not file a statement as required by S. 10 (1), a document or a book of account or any other material piece of evidence being rendered inadmissible in any subsequent civil suit or proceeding if not produced though called for and in possession of a creditor (S. 11), an agreement arrived at with creditors representing a certain percentage of the total liabilities of a debtor being liable to be held binding on the rest without their consent (S. 14), a certificate being granted to a debtor if his offer for a settlement, although fair as determined according to prescribed principles, is rejected by a creditor and its being liable to be taken into consideration by a civil court in a subsequent suit by that creditor while awarding interest, civil suits and execution proceedings relating to claims cognizable by a Board being barred (S. 19), pending suits and proceedings being liable to be stayed (S. 25), no appeal or revision application being allowed against an order of a Board (S. 22), appearance of a party by a legal practitioner or authorised agent being legal only if permitted by the Board (S. 24), debts due to co-operative societies being excluded unless their inclusion is assented to by the Registrar

(S. 15) etc., are common to both. It is however distinguishable by certain special features. They are :—

- (1) The appointment of the Board was from the very first for a period of three years instead of one.
- (2) There is not only a maximum limit of Rs. 25,000 with power to the Provincial Government to increase it in the case of a Board appointed for any particular area but there is also a minimum limit of Rs. 150 for the purpose of jurisdiction of the Board.
- (3) The percentage of the debts which the creditors giving their consent to a settlement are required to represent is 50 instead of 40.
- (4) The Board is given power to decide all disputes as to the existence and amount of any debts.
- (5) The award of the Board is given the force of a decree of a civil court and is made executable as such.
- (6) More interest than would be equal to the principal cannot be allowed in the case of a debt incurred prior to 1-6-33.
- (7) Transfer of property made by a debtor while an application is pending or an agreement is in force is only voidable at the instance of a creditor and not void *ab initio*.

(f) *United Provinces*.—There is one more Provincial Act passed before 1st April 1937, bearing the title *The United Provinces Agricultural Relief Act, 1934*. It contains certain provisions intended to grant some measure of relief to agricultural debtors but does not contain any for setting up any special class of tribunals and does not prescribe a special remedy with a view to take stock of the total liabilities of an agricultural debtor and devise means for their possible extinction within a particular period. The said Act was twice amended slightly by the passing of U. P. Acts III of 1935 and IX of 1937.

## II. Debt Relief Enactments passed after 1st April 1937.

(a) *Madras*.—In the above survey of the provincial legislation on the subject of agricultural indebtedness I have taken notice of those

Provincial Acts only as had been passed after the publication of the Report of the Indian Central Banking Inquiry Committee in 1931 and before the commencement of the operation of the *Government of India Act, 1935*, in the provinces. After the commencement of its operation but before the formation of the Congress Ministry in Madras an Interim Ministry had been formed. During its short regime a special remedial Act intended to give a special additional relief to the agricultural debtors in that province, namely *The Madras Agriculturists Debt Relief Act, 1938* (IV of 1938) was placed on the statute-book of the province. It is a small Act containing 28 sections divided into four chapters, the notable one from amongst which is Chapter II comprising SS. 7 to 14. Those sections provide for the scaling down of debts, for allowing interest at specially reduced rates for old and new loans and other incidental matters. The provisions in some of those sections are far more drastic than those contained in SS. 38 to 42 of our Act to which they correspond. This Act had sometime ago attracted considerable public attention owing to the competency of the Madras legislature to pass a piece of legislation affecting the right to claim an amount due under the terms of a negotiable instrument such as a promissory note, which is included in the exclusive Federal Legislative List, No. I in Schedule VII to the *Government of India Act, 1935*, having been challenged in the case of *Subrahmanyam Chettyar v. Muttuswami Goundan* before the Madras High Court, an appeal was preferred to the Federal Court against a decision of that court holding the Act to be *intra vires*, that appeal was dismissed in December 1940 by a majority of Judges on the ground that the pith and substance of the Act cannot be deemed to be legislation with regard to negotiable instruments or promissory notes which are Central Subjects, and leave to appeal to the Privy Council against its dismissal was also refused by it, by a judgment of a majority of Judges delivered in April 1941, on the ground that the question of the competency of the legislature did

not arise in that case because the promissory note had there become merged in a decree obtained before the operation of the Madras Act and that it was the debt due under the decree, not that due under the promissory note, which had been held by the Madras High Court liable to be scaled down under the new Act.<sup>29</sup>

The said Act was amended in 1943 by *The Madras Agriculturists Debt Relief (Amendment) Act, 1943* (Mad. Act XV of 1943). That is a short Act in 5 sections. SS. 2 and 3 thereof inserted new SS. 19A and 25A in the original Act in the interest of the creditor class and S. 5 even gave retrospective effect from 27-10-39 to the amendment made by S. 3 which conferred a right to file an appeal against the orders passed under SS. 18 (1), 19, 19A (4) (a), 22, 23 and 24 and also a right to file a second appeal against such orders passed by the courts subordinate to the High Court. *The Madras Debt Conciliation Act, 1936* (Mad. Act, II of 1936) was also amended thrice since 1st April 1937 by passing Mad. Acts XVII of 1942,

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29. The first decision of the Federal Court was reported in 3 F. L. J. 157 and in (1940) F. C. R. 188 while the second was reported in 4 F. L. J. 1. See also the ruling of the same court in *re. the Madras Agriculturists Debt Relief Act, 1938* reported in 2 F. L. J. 39. All these rulings left open the question whether a Provincial legislature has or has not the power to pass an Act on a subject which is within the exclusive jurisdiction of the Central legislature such as the transaction embodied in non-negotiable promissory notes which fall within the purview of SS. 32, 79 and 80 of the Negotiable Instruments Act, 1881. The Federal court ruled in favour of the Provincial legislature in the cases of the *Bank of Commerce Ltd., Khulna v. Amulya Krishna Basu and Bank of Commerce Ltd., Khulna v. Brojo Lal Mitra* reported in (1944) F. C. R. 126, which were cases under the *Bengal Money-lenders Act, 1940* (Ben. Act X of 1940) containing provisions similar to those in the *Madras Agricultural Debt Relief Act, 1938* (Mad. Act IV of 1938). But those cases did not involve a direct question as to the power of the legislature to legislate in respect of a transaction evidenced by a promissory note. When the cases of the *Bank of Commerce Ltd., Khulna v. Kunj Behari Kar* and others reported in (1944) F. C. R. 370 in which such a question was directly in issue came up before it, it held that the provisions of the said Bengal Act so far as they affected non-negotiable promissory note transactions were *ultra vires* the Provincial legislature and reversed the decree of the Calcutta High Court in the said cases reported in A. I. R. 1944 Cal. 196, saying that the said question had been left open by the decisions under the Madras Act.

As this decision was likely to render invalid many declarations, decrees and orders made under the similar Provincial Acts passed by the legislatures of the other Provinces after 1st April 1937 and to prevent the courts and special tribunals there from acting on their provisions so far as they affected transactions based on promissory notes the Governor General passed in May 1945 Ordinance No. XI of 1945 temporarily validating such provisions and rendering immune from attacks all the declarations, decrees and orders based on them that had been made prior to 12th December 1944 and those that may be made up to 31st March 1947. This Ordinance has been excluded from the operative part of *The Termination of War (Definition) Ordinance, 1946* (Or. No. X of 1946) and will therefore continue to be in force till the said date.

IX of 1943 and XXXI of 1943, We need not go here into the details of the slight amendments made thereby.

One more Act passed in 1943 by the Madras legislature in the interest of the debtor class as a whole is *The Madras Pawn-brokers Act, 1943* (Mad. Act XXIII of 1943). As its name implies it was designed to place some salutary checks on the dishonest practices of those money-lenders who lent money on the pawn of valuables or goods.

(b) *Bihar*.—The legislature of the Province of Bihar passed *The Bihar Money-lender's Act, 1938* (Bihar Act III of 1938) and slightly amended it in the same year by passing Bihar Act V of 1938 and also passed an additional Act in 1939 specially providing for the regulation of money-lending transactions, which is called *The Bihar Money-lenders (Regulation of Transactions) Act, 1939* (Bihar Act VII of 1939).

Bihar Act III of 1938 has 27 sections divided into 5 chapters as follows:—Chapter I (SS. 1 to 3)—Preliminary; Chapter II (SS. 4 to 7)—Registration of money-lenders and keeping of accounts by them; Chapter III (SS. 8 to 18)—Suits in respect of loans and execution of decrees; Chapter IV (SS. 19 to 21)—Penalties and procedure; Chapter V (SS. 22 to 27)—Miscellaneous. S. 12 occurring in Chapter III thereout is important as conferring powers on the civil courts to re-open a transaction, take an account between the parties and relieve the debtor of all liability in respect of interest in excess of 9 per cent. p. a. in the case of an unsecured loan, even when an account had been previously made up, the old transactions had been closed and a new account opened, set aside either wholly or in part or revise or alter any security or agreement made in respect of any loan and, if the money-lender has parted with the security, to order him to indemnify the debtor in such manner and to such extent as it may deem fit, provided that the new obligation had not been incurred on a date more than 12 years prior to the date of the transaction and provided that a decree of a civil court is not allowed to be affected by the operation of said section. The amending Act V of 1938 is a very short Act, of which only S. 3 is important as extending the provisions of SS. 11 to 18 of Bihar Act III of 1938 to pending suits and proceedings.

*The Bihar Money-lenders (Regulation of Transactions) Act, 1939* (Bihar Act VII of 1939) is an Act in 19 sections divided into three chapters as follows:—Chapter I (SS. 1 to 3)—Preliminary; Chapter II—(SS. 4 to 15)—Provisions in respect of loans and execution of decrees and Chapter III (SS. 16 to 18)—Miscellaneous. S. 18 thereof refers to a schedule at the end mentioning the enactments repealed thereby. The said enactments are those contained in S. 2 (b), (c), (e), (k) and (n), the whole of Chapter III and SS. 22 to 26 of Bihar Act III of 1938 and the whole of Bihar Act V of 1938. S. 12 of Bihar Act III of 1938 has been re-enacted with modifications as S. 8. The principal modifications made thereby are:—(1) The power of the court is made exercisable even in a suit brought before the commencement of the Act and even in an appeal or revision proceeding arising out of such a suit; (2) the rate of interest, excess over which could be relieved against, was 9 per cent. in the case of secured loans and 12 per cent. in the case of unsecured loans; (3) the same rates were made applicable even when an old transaction or a series of such transactions which had been closed was re-opened and a fresh account was made up and (4) the old provisoes were re-produced and a fresh one was added to the effect that if, after so making up an account it was found that the creditor had been overpaid, no order for the refund of the amount paid in excess was to be made.

The legislature of Bihar does not seem to have passed any enactment specially intended to give relief to agricultural debtors only from their existing indebtedness or to give the debtors in the Province generally any statutory protection.

(c) *Bengal*.—In Bengal *The Agricultural Debtors Act, 1935* (Bom. Act VII of 1936) was twice amended after 1st April 1937, once by passing Bom. Act VIII of 1940 and for the second time by passing Ben. Act II of 1942. The principal objects in passing the first were:—(1) to simplify the procedure for the settlement of the debts of agriculturists and by doing so to accelerate the disposal of cases by the Debt Settlement Boards which had been established, (2) to preclude non-agriculturists from taking advantage of the Act and (3) to strengthen the hands of the Boards in dealing with cases in which creditors refuse to accept an offer which is considered fair by the Board or a special Appellate Officers. The amendments made



IX of 1943 and XXXI of 1943, We need not go here into the details of the slight amendments made thereby.

One more Act passed in 1943 by the Madras legislature in the interest of the debtor class as a whole is *The Madras Pawn-brokers Act, 1943* (Mad. Act XXIII of 1943). As its name implies it was designed to place some salutary checks on the dishonest practices of those money-lenders who lent money on the pawn of valuables or goods.

(b) *Bihar*.—The legislature of the Province of Bihar passed *The Bihar Money-lender's Act, 1938* (Bihar Act III of 1938) and slightly amended it in the same year by passing Bihar Act V of 1938 and also passed an additional Act in 1939 specially providing for the regulation of money-lending transactions, which is called *The Bihar Money-lenders (Regulation of Transactions) Act, 1939* (Bihar Act VII of 1939).

Bihar Act III of 1938 has 27 sections divided into 5 chapters as follows:—Chapter I (SS. 1 to 3)—Preliminary; Chapter II (SS. 4 to 7)—Registration of money-lenders and keeping of accounts by them; Chapter III (SS. 8 to 18)—Suits in respect of loans and execution of decrees; Chapter IV (SS. 19 to 21)—Penalties and procedure; Chapter V (SS. 22 to 27)—Miscellaneous. S. 12 occurring in Chapter III thereout is important as conferring powers on the civil courts to re-open a transaction, take an account between the parties and relieve the debtor of all liability in respect of interest in excess of 9 per cent. p. a. in the case of an unsecured loan, even when an account had been previously made up, the old transactions had been closed and a new account opened, set aside either wholly or in part or revise or alter any security or agreement made in respect of any loan and, if the money-lender has parted with the security, to order him to indemnify the debtor in such manner and to such extent as it may deem fit, provided that the new obligation had not been incurred on a date more than 12 years prior to the date of the transaction and provided that a decree of a civil court is not allowed to be affected by the operation of said section. The amending Act V of 1938 is a very short Act, of which only S. 3 is important as extending the provisions of SS. 11 to 18 of Bihar Act III of 1938 to pending suits and proceedings.



*The Bihar Money-lenders (Regulation of Transactions) Act, 1939* (Bihar Act VII of 1939) is an Act in 19 sections divided into three chapters as follows:—Chapter I (SS. 1 to 3)—Preliminary; Chapter II—(SS. 4 to 15)—Provisions in respect of loans and execution of decrees and Chapter III (SS. 16 to 18)—Miscellaneous. S. 18 thereout refers to a schedule at the end mentioning the enactments repealed thereby. The said enactments are those contained in S. 2 (b), (c), (e), (k) and (n), the whole of Chapter III and SS. 22 to 26 of Bihar Act III of 1938 and the whole of Bihar Act V of 1938. S. 12 of Bihar Act III of 1938 has been re-enacted with modifications as S. 8. The principal modifications made thereby are:—(1) The power of the court is made exerciseable even in a suit brought before the commencement of the Act and even in an appeal or revision proceeding arising out of such a suit; (2) the rate of interest, excess over which could be relieved against, was 9 per cent. in the case of secured loans and 12 per cent. in the case of unsecured loans; (3) the same rates were made applicable even when an old transaction or a series of such transactions which had been closed was re-opened and a fresh account was made up and (4) the old provisoes were re-produced and a fresh one was added to the effect that if, after so making up an account it was found that the creditor had been overpaid, no order for the refund of the amount paid in excess was to be made.

The legislature of Bihar does not seem to have passed any enactment specially intended to give relief to agricultural debtors only from their existing indebtedness or to give the debtors in the Province generally any statutory protection.

(c) *Bengal.*—In Bengal *The Agricultural Debtors Act, 1935* (Bom. Act VII of 1936) was twice amended after 1st April 1937, once by passing Bom. Act VIII of 1940 and for the second time by passing Ben. Act II of 1942. The principal objects in passing the first were:—(1) to simplify the procedure for the settlement of the debts of agriculturists and by doing so to accelerate the disposal of cases by the Debt Settlement Boards which had been established, (2) to preclude non-agriculturists from taking advantage of the Act and (3) to strengthen the hands of the Boards in dealing with cases in which creditors refuse to accept an offer which is considered fair by the Board or a special Appellate Officers. The amendments made

for these and other minor purposes are various. Into the details thereof we need not enter here. The second Act (II of 1942) had been passed with the principal object of restoring to their previous owners the holdings which had been sold and put into the possession of other persons in execution of decrees passed and executed before the Act of 1935 could be effectively put into operation and a minor one of taking out of the jurisdiction of the Calcutta High Court the cases decided by the Boards.

One more important piece of legislation passed there was *The Bengal Money-lenders Act, 1940* (Ben. Act X of 1940), which has already been referred to. It is a fairly long Act of 45 sections divided into 7 chapters as follows:—Chapter I (SS. 1 to 3)—Introductory; Chapter II (SS. 4 and 5)—Competent courts and procedure; Chapter III (SS. 6 to 23)—Registration and licensing of money-lenders; Chapter IV (SS. 24 to 27)—Regulation of accounts; Chapter V (SS. 28-29)—Assignment of loans; Chapter VI (SS. 30 to 33)—Interest and other charges and Chapter VII (SS. 34 to 45)—Miscellaneous. Chapter VI thereout contains provisions restricting the amount of interest recoverable, the right to increase the amount of actual advance by the addition of incidental charges etc. and Chapter VII has S. 36 empowering a court to reopen transactions with a view to give relief to borrowers in general. The nature of the relief provided for thereby is the same as that provided for by S. 8 of the Bihar Act VII of 1939.

The legislature of Bengal also placed on its statute-book the *Bengal Rates of Interest Act, 1939* (Ben. Act III of 1939) regulating generally the maximum rates at which interest could be charged in the cases of particular classes of loans.

(d) *Sind*.—The newly created Province of Sind enacted for the relief of its indebted agriculturists *The Sind Agriculturists Relief Act, 1940* (Sind Act VIII of 1940). It is an Act in 16 sections out of which SS. 2 to 16 are divided into 3 chapters. Chapter I comprising SS. 2-3 contains preliminary provisions, Chapter II comprising SS. 4 to 12 provides for the scaling down of debts divided into 2 classes, namely those incurred before 1-10-32 and those incurred on or after that date and Chapter III comprising SS. 13-16 contains miscellaneous provisions, one of which contained in S. 13 is important

as providing for the amendment of outstanding decrees on re-opening them if the debtors concerned apply for that purpose within 90 days of the commencement of the Act.

The said Act was amended in 1941 by the passing of Sind Act VII of 1941 and again in 1943 by the passing of Sind Act XIX of 1943. The substantial amendment made by the former was that by S. 2 the period of 90 days mentioned in S. 13 of the principal Act was directed to be reckoned from the date of commencement of the amending Act and the applications which may have been dismissed or withdrawn were directed to be restored to file or permitted to be revived. S. 7 of the Act of 1943 abolished the limitation of 90 days altogether but gave the creditors a right to file an appeal. This second amending Act made some other amendments also but they were of a minor character.

In 1941 the Sind legislature also passed the *Sind Debt Conciliation Act, 1941* (Sind Act IX of 1941) for setting up Debt Conciliation Boards as in, the Central Provinces and Berar, and Madras. It is an Act in 36 sections making provisions for the relief of the agricultural debtors of the province on lines settled after an inquiry into the working of similar legislation in the older Provinces.

Lastly, in 1944 the Sind legislature also placed on its statute-book *The Sind Money-lenders Act, 1944*, (Sind Act XIV of 1944). It is a very carefully-worded elaborate Act in 46 sections divided into 5 chapters as follows:—Chapter I (SS. 1 and 2)—Definitions; Chapter II (SS. 3 to 5)—Constitution and powers of courts in proceedings under this Act; Chapter III (SS. 6 to 22)—Registration and licensing of money-lenders; Chapter IV (SS. 23 to 26)—Regulation of accounts and Chapter V (SS. 27 to 46)—Miscellaneous. No special courts are established under the Act but the decrees passed under it by the Judge of the Small Causes Court can be appealed against to the Chief Judge and those passed by Subordinate Judges can be tested by a first appeal to a District Court and a second appeal to the Chief Court. The systems of the registration and licensing and of the keeping of accounts and furnishing of extracts thereof to debtors are almost of the same nature as in Bihar, Bengal, Punjab etc. The miscellaneous provisions in Chapter V give to the courts powers to limit the amount and nature of interest

to be allowed (SS. 27 to 29), to disallow the expenses connected with the advancement of loans (S. 30), to pass instalment-decrees even in mortgage suits (S. 32), to amend outstanding decrees so as to order payment by instalments instead of at once, after giving notice to the decree-holders concerned (S. 33), to accept deposits in case of simple debts as in the case of mortgage-debts (S. 38), and lastly to re-open closed transactions on setting aside adjustments and agreements, to make inquiries, to make up accounts afresh on crediting towards the principal the amount recovered in excess thereof on account of interest, and to set aside, revise or alter any security or agreement and if necessary, order an indemnity to be paid to the debtor (SS. 36-37).

(e) *Orissa*.—This was another small Province whose legislature placed on its statute-book a similar piece of legislation entitled *The Orissa Money-lenders Act, 1939* (Orissa Act III of 1939). This is an Act in 27 sections divided into 5 chapters as under :—Chapter I (SS. 1 to 3)—Preliminary ; Chapter II (SS. 4 to 7)—Registration of money-lenders and keeping of accounts by them ; Chapter III (SS. 8 to 17)—Provisions relating to suits in respect of loans and execution of decrees ; Chapter IV (SS. 18 to 20)—Penalties and procedure, and Chapter V (SS. 21 to 27)—Miscellaneous. The provisions in Chapters II, III and IV are almost of the same nature as those in the corresponding Acts of the other Provinces.

(f) *United Provinces*.—After 1st April 1937 the United Provinces legislature passed an Act of general application to all the debtors residing within them named *The United Provinces Debt Redemption Act, 1940*. It is an Act in 27 sections divided into 4 chapters as follows :—Chapter I (SS. 1 to 4)—Preliminary ; Chapter II (SS. 5 to 12)—Suits and decrees on loans ; Chapter III (SS. 13 to 23)—Execution of decrees and Chapter IV (SS. 24 to 27)—Miscellaneous. Chapters II, III and IV contain many provisions which curtail the common law rights of a creditor and empower courts to give relief to agriculturists and also to workmen as defined in S. 2(20)(b) of the Act against harsh terms incorporated in pro-notes, bonds etc. passed by them, enable judgment-debtors to apply for re-opening decrees and making up accounts afresh as provided in this Act, pass fresh instalment decrees etc.

Slight amendments were made in the above Act by U. P. Act VI of 1941 and VI of 1942.

In addition to the above, the U. P. legislature passed for the special benefit of agriculturist debtors *The United Provinces Regulation of Agricultural Credit Act, 1940* (U. P. Act XIV of 1940). It is a fairly long Act containing 35 sections divided as under:—Chapter I (SS. 1 to 3)—Preliminary; Chapter II (SS. 4 to 7)—Protected land; Chapter II (SS. 8 to 11)—Execution of decrees; Chapter IV (SS. 12 to 26)—Voluntary alienation of protected land, and Chapter V (SS. 27 to 35)—Miscellaneous. The object in passing it was “to prevent excessive borrowing by agriculturists and for this purpose to limit the amount that can be obtained by the execution of decrees against agricultural produce and land and to restrict the voluntary alienation of land.” With this object in view, a certain quantity of land belonging to each peasant proprietor was declared under this Act to be “protected land.”

(g) *Assam*.—In Assam no fresh legislation was made after 1st April 1937 either as a remedial or preventive measure but the *Assam Money-lenders Act, 1934* (Assam Act IV of 1934) was amended by passing Assam Act VI of 1943. It is a short Act in 5 sections, nos. 2, 4 and 5 whereout introduced certain important changes. Thus by S. 2 bonds passed for past liabilities and for arrears of rent were brought within the purview of S. 2 (1) and (3) of the parent Act, by S. 4 the courts were prohibited from allowing interest at a higher rate than 9½ per cent. in the case of secured loans and 12½ per cent. in that of unsecured ones and S. 9 of the old Act was replaced by S. 5 of this Act which prohibited creditors from recovering a sum greater in the aggregate than double the principal amount, whatever the nature of the transaction and whatever its terms agreed upon by the parties, and directed the courts to declare as discharged usufructuary mortgages upto Rs. 500/- if executed 12 years prior to the Act and 9 years subsequent to it.

(h) *Punjab*.—The Acts passed by the Punjab legislature after 1st April 1937 were:—(1-2) Punjab Acts IX and X of 1938 and X of 1939, which amended *The Punjab Debtors Protection Act, 1936* (Punjab Act II of 1936), (3-4) Acts XII of 1940 and VI of 1942, which amended *The Punjab Relief of Indebtedness Act, 1934* (Punjab

Act II of 1934) and (5) *The Punjab Registration of Money-lenders Act, 1938* (Punjab Act III of 1938) which seems to have supplemented *The Punjab Regulation of Accounts Act, 1930*. The amendments made by Punjab Acts IX of 1938 and X of 1939 and Act VI of 1942 were not very material but some of those carried out by Punjab Act XII of 1940 in Punjab Act II of 1934 were. It is a long Act containing 18 sections. Thereout S. 3 substituted in S. 5 of the Act of 1934 a new clause (iv) which declared a stipulated rate of interest higher than  $7\frac{1}{2}$  per cent. simple or more than 2 per cent. higher than the bank rate, in the case of secured loans and higher than  $12\frac{1}{2}$  per cent simple in the case of unsecured ones to be excessive for the purpose of the application of S. 3 of the *Usurious Loans Act, 1918* but excluded from its operation loans advanced by the Imperial Bank or a scheduled bank prior to 1-4-37 or by a registered co-operative society; S. 6 inserted a new section 15A which authorises a Board to decide the question of the genuineness or enforceability of a debt but allows a right of appeal against its decision to the Collector or Assistant Collector in cases in which the total amount challenged is more than Rs. 2,000. S. 14 amending S. 30 of the principal Act prohibits a court from passing a decree in a suit brought before the commencement of the Act or giving effect to any decree or award, for an amount in excess of double the principal amount less such as may have been received in excess of that claimable under S. 3 of the *Usurious Loans Act, 1918* and also prohibits a court from passing a decree for such an amount in a suit brought after the commencement of the Act. It also renders voidable a decree or an award made on or after 15-10-39 which is not in conformity with the above provisions and authorises a debtor to apply for setting it aside within 6 months of the commencement of the Act. Besides the above this Act made certain other amendments also, into the details whereof we need not go here.

Punjab Act III of 1938 containing 13 sections introduced in the Province the system of the registration and licensing of money-lenders, which, if not complied with, debarred them from suing to recover their dues.

(i) *Central Provinces and Berar*.—The legislature of the re-constituted Province of the Central Provinces and Berar passed after 1st April 1937 C. P. and Berar Acts XIX, XX, XXI and XXII of 1939,

which made certain amendments in its *Debt Conciliation Act, 1933* (C. P. Act II of 1933), a *Supplementary Money-lenders Act, 1939* (C. P. and Berar Act XVII of 1939) and three amending Acts in 1939, namely C. P. and Berar Acts XVIII, XXIII and XXXVII of 1939 and 1 in 1940, namely C. P. and Berar Act XIV of 1940, which made various major and minor amendments in its *Money-lenders Act* (C. P. Act XIII of 1934), also C. P. and Berar Act X of 1938 amending its *Reduction of Interest Act, 1936* (C. P. Act XXXII of 1936) and also passed the *Central Provinces and Berar Relief of Indebtedness Act, 1939* (C. P. and Berar Act XIV of 1939), which set up Debt Relief Courts in addition to Debt Conciliation Boards, and amended it several times by passing C. P. and Berar Acts II and VI of 1940, V of 1941, XI of 1942 and II of 1943. The Act of 1939 is a very elaborate Act in 27 sections and has two schedules appended to it. It does not repeal the Debt Conciliation Act of 1933 but restricts the jurisdiction of the D. C. Boards set up under it to the applications already filed and amongst them too to those involving a settlement of debts to the extent of Rs. 25,000. The powers given to the D. R. Courts are very wide and absolute except for the fact that the District Judge concerned is invested by S. 20 with power to revise an order of such a court if an application therefor is made to him within 90 days of the date of the order and to reverse or modify such order if it is contrary to law, passed without jurisdiction or arbitrary i.e. showing the non-exercise of jurisdiction already vested and if the instalments fixed are inadequate. The said courts themselves are also empowered to review their own orders of their own motion or on an application by a party made within 60 days.

## XI

It will appear on looking into the list of the Provincial Debt Laws appended at the end of this Volume (Appendix IV) that the total number of such laws comes to 74, of which the largest number, 32, goes to the credit of the Central Provinces and Berar. It is not however the number of Acts passed in any Province that has any significance. What counts is the number of fronts from which the problem of rural indebtedness is attacked in any particular province. It would be clear even to a layman that it is not enough

General Remarks  
on the Provincial  
Debt Laws.



to relieve the debtors from their existing indebtedness and that it is absolutely essential to investigate the causes which give rise to it and to remove them as far as possible. Much of the work in that direction lies outside the legislative chambers and is therefore beyond the scope of this work. But it cannot be gainsaid even by the enthusiasts of social and economic reforms in the rural areas that it is necessary even for such reformers to take the help of the legislatures in preparing the ground for a better social and economic order. It was in pursuance of that view that the Royal Commission on Agriculture and the Central and Provincial Banking Inquiry Committees were entrusted with the task of finding out the causes of the indebtedness of the rural population and suggesting measures for remedying them. They made their reports embodying certain general recommendations and certain special ones designed to meet the needs of the particular local situations in the Provinces. Acting upon them 10 Provinces passed Acts containing suitable provisions. Many of them have thought it proper to adopt measures calculated to give relief to the industrial workers as well as to the agriculturists. The measures falling in that class are:—(1) The Money-lenders Acts of the Central Provinces, Punjab, Bengal, Bihar, Assam, Orissa and Sind, (2) the Usurious Loans Amendment Acts of the Central Provinces and the United Provinces and provisions of the same nature in Assam Act IV of 1939 (S. 8) and Punjab Act VII of 1934 (S. 14), (3) the Provincial Insolvency Amendment Act of the Central Provinces and provisions of that nature in Punjab Act VII of 1934 (SS. 3-4) and Ben. Act VII of 1936 (SS. 22-25), (4) the Relief of Indebtedness, Debtors Protection and Debt Conciliation or Debt Redemption Acts of the Central Provinces, Punjab, Madras, United Provinces and Sind, (5) the Reduction of Interest Act of the Central Provinces and Regulation of Interest Act of Bengal and the Pawn-brokers Act of Madras. The measures of this class serve the double purpose of giving relief to both the classes of debtors from their existing indebtedness and also that of creating conditions which would prevent the recrudescence of the state of indebtedness by placing salutary checks on the rapaciousness of the members of the money-lending class and making it impossible for them to take advantage of the necessity and ignorance of the borrowing classes. Some of the Provinces on the other hand adopted either exclusively or in addition to one or more of the former classes



of measures those calculated to alleviate the position of the agriculturist class only. The measures falling in this class are the Agriculturists Debt Relief Acts of Madras, Bengal, United Provinces, Bombay and Sind. The object of these measures is to give relief to the specific class above-mentioned from existing indebtedness only. In those provinces in which such measures are aided by any of those of the former class as in Bengal, United Provinces and Sind there is a likelihood of the creation of conditions which would act as a shield protecting the relieved agriculturists against the machinations of the professional lenders to entangle them over again in their traps. Even in Madras there is a check on the unscrupulousness of at least those money-lenders who lend money on the pawn of valuables or goods. But unfortunately in this Province there is no piece of legislation which would serve even that limited purpose in the case of non-agriculturist debtors. So far as agriculturist debtors are concerned the Provincial Government itself has begun to grant loans for the improvement of their lands on easier terms but so far as their social needs are concerned it has, so far as I am aware, made no arrangement. They are therefore free to borrow money on personal security from persons who depend more on their coercive methods than on the legal one to recover their dues. Moreover the Bombay Act itself contains several provisions corresponding to which there are provisions in the Acts of other Provinces, some of which do and some of which do not apparently bear names giving a complete clue to the nature of the contents thereof. Such provisions have been arranged in the form of a Comparative Table at the end of this Introduction.

## XII

The debt legislation in Bombay has however some distinguishing and redeeming features which place it in a class by itself. They are:—(1) that Act XXVIII of 1939 already contained S. 65 which rendered invalid any alienation of his property included in an award, made by a debtor who was a party to the award and S. 77 which prohibited such a debtor indebted to a resource society or a person authorised under S. 78 to advance loans for financing crops, from alienating or encumbering the standing crops or the produce of any

Redeeming features of the Bombay Debt Legislation.

of his lands whatever without the permission of such society or person, declared such alienation or encumbrance void and further made it a punishable offence, and both those sections have by Act VIII of 1945 been so amended as to cover the case of a debtor who is a party to a proceeding which is pending before a D. A. Board or a Court; (2) that the original Act already contained in S. 78 a provision for the advancement of money for financing crops to a debtor who was a party to an award and that section too has by the Act of 1945 been so amended as to admit of loans being given even to a debtor who is a party to a proceeding pending before a D. A. Board or a Court; (3) that the Co-operative Societies Act, 1925 will within the course of this year be suitably amended<sup>30</sup> in order to enable registered co-operative societies to advance money for financing crops to a debtor who is a party to a proceeding or an award and the societies making such advances have been protected by placing them amongst the privileged creditors mentioned in S. 3 of this Act and (4) that SS. 54 and 55 have been so amended by the amending Act of 1946 as to make it compulsory for the creditors of a debtor to accept from the Primary or Provincial Land Mortgage Bank in full satisfaction of the amount found due to them, ready cash or Government-guaranteed bonds for the amounts if they are less than or equal to 50 per cent. of the value of the immoveable property of the debtor, in all cases in which the debtor owns such property of the value of twice the amount of such debts or more than that. The first two amendments will prevent agricultural debtors at least who make applications under S. 17 or 23 of this Act from falling into the hands of unscrupulous money-lenders. Since the third will facilitate their getting loans for financing crops from registered co-operative societies, they will not have to suffer for the loss of credit which the disabilities to alienate or encumber their property and standing crops necessarily involves. The last will put an end at once to the relationship of debtor and a creditor as regards those debtors who have the required quantity of immoveable property and establish such a new relationship between them and the Bank paying the cash or passing the bonds, who can be expected to be fair

30. Vid. the Re-construction Department Notification No. 1615/39 dated 22nd December 1945 in the B. G. G., Pt. V dated 27th December 1945 publishing a Bill to amend the said Act by substituting a new section 5 for the old section 5, inserting a new section 5A, substituting a new section 16 (1) for the old section 16 (1), inserting a new section 16A, changing the wording of S. 59B (1) and (3), making the old Explanation thereto Explanation I and adding a new Explanation II.

in their dealings. Experience alone will show to what extent these expectations are fulfilled in the case of such debtors.

This Act is on the whole a complicate piece of legislation and the work of its administration is by no means easy. The Act of 1939 as amended by that of 1945 has introduced in several sections a distinction between Boards established before and after the coming into force of the latter Act. Thereafter several alterations in the constitution of even the old Boards were made and two large groups of new Boards were established. I therefore append at the end of this INTRODUCTION detailed notes on the constitution of the Boards set up under the Act as amended upto 1946. I also append there a comparative list setting forth the features which are common to the Bombay Act and the similar Acts in the other Provinces.

The Bombay debt legislation does not purport to hold out any hope of relief to the non-agricultural debtors of the large cities and industrial towns in the Province. Except the provisions of the *Usurious Loans Act, 1918* they cannot invoke any statutory provisions for that purpose. Those provisions have already been authoritatively pronounced to be quite inadequate to afford any substantial relief in face of the provisions of the *Negotiable Instruments Act, 1881*, the *Indian Contract Act, 1872*, *Transfer of Property Act, 1882* and the *Indian Evidence Act, 1872*, all of which enactments passed more than 60 years ago could not have been framed in contemplation of the economic conditions of the present age. A statutory control on the business of money-lending in general in this Province with a provision for giving certain kinds of relief in the case of debts incurred some years prior to the Act by all classes of debtors is therefore long overdue. It passes one's imagination why even the Provincial Government constituted under S. 93 of the *Government of India Act* should not have considered it necessary to place on its statute-book a *Money-lenders Act* on lines determined in view of the experience of the working of such Acts in 7 other Provinces or even a provincial amendment of the *Usurious Loans Act, 1918* on the lines of those in force in the Central Provinces and the United Provinces. The Provincial Government re-constituted from the elected

representatives of the Province however recognised in 1946 the necessity of making the necessary inquiry for determining the proper line of action and re-introducing in the Legislative Assembly of the Province the old *Money-lenders Bill of 1938* ( VII of 1938 ) modified so as to bring under effective control the business of money-lending which even in the war period and the post-war re-construction period of controls of all commodities and activities has continued to run on merrily like an unbridled horse. The Assembly approved of its underlying principle at its first reading and referred it to a Select Committee. That Committee submitted its report and it was published at pp. 239-53 of Pt. V of the *Gazette* dated 2nd October 1946. But in the meantime L. A. Bill No. XXVII of 1946 for amending this Act had been drafted and published at pp. 225-31 of Pt. V of the *Gazette* dated 18th September 1946. That Bill was again superseded by L. A. Bill No. XIV of 1947 published at pp. 43-66 of Pt. V of the *Gazette* dated 12th February 1947 till which date the *Money-lenders Bill* was not placed before the Assembly even for its second reading. Is history going to repeat itself?



## APPENDIX I

### BOARDS SET UP UNDER THE ACT FROM TIME TO TIME.

I. Since the publication of the first edition of the Commentary on the Act of 1939 as amended by Act VI of 1941 the establishment of the D. A. Boards below-mentioned was found to have been announced by the Government Notifications of the Revenue Department mentioned against them, namely :—

Serial No.	Area	District	No. and date of the Notification	Date of establishment
1	Bulsar taluka and Pardi mahal.	Surat ... ..	No. 3791/33 (a) dated 23-12-41	1-1-42
2	Nandurbar taluka and Navapur peta.	West Khandesh...	"	"
3	Khed taluka and Ambegaon peta.	Poona ... ..	"	"
4	Pandharpur and Sangola talukas.	Sholapur ... ..	"	"
5	Navalgund taluka and Nargund peta.	Dharwar ... ..	"	"
6	Indi and Shindgi talukas.	Bijapur ... ..	No. 3791/93 dated 5-3-43	20-3-42
7	Dahanu and Shahpur talukas.	Thana ... ..	No. 3791/93 dated 4-4-42	20-4-42
8	Dohad taluka and Jhalod mahal.	Broach and Panch Mahals	No. 3791/93 dated 14-4-42	"

With reference to these Boards changes of personnel did take place as occasions arose and Government Notifications announcing them did appear in the *Official Gazette* from time to time in connection therewith. But they are not material.

Those which appeared at pp. 1109A to C of an *Extraordinary* issue of the said *Gazette* dated 2nd May 1945 however deserve particular notice here. They were in all 7 Notifications, bearing

Nos. 9402/39 and 9402/39 (a) to (f) and all dated 1st May 1945, announcing several important changes in the machinery set up for the adjustment of the debts of agricultural debtors under this Act.

Those changes fall into 4 classes as under :—

(1) *Changes of personnel* made under S. 5 (1) (b) in the case of the following already existing Board, namely :—Bulsar and Pardi talukas in the Surat district, Dobad taluka and Jhalod mahal in the Panch Mahals district, Pandharpur and Sangola talukas in the Sholapur district and Indi and Shindgi talukas in the Bijapur district.

The relative Notifications were :—Nos. 9402/39, 39a, 39b and 39c.

(2) *Establishment of new Boards on dissolving and re-constituting the areas of some of the old ones and bringing fresh areas within the purview of the Act.*—The old Boards so dealt with were those for Dahanu and Shahpur talukas in the Thana District, Navalgund taluka and Nargund peta in the Dharwar district and Khed taluka and Ambegaon peta in the Poona district. The areas for which new Boards were established were :—Dahanu and Umbargaon talukas and Mokhada peta in the Thana district, Shahapur taluka and Murbad peta in the same district, Navalgund and Ron talukas and Nargund peta in the Dharwar district, Khed taluka in the Poona district and Junnar taluka and Ambegaon peta in the same district.

The relevant Notification was No. 9402/39 (e).

(3) *Dissolution of an old Board and the establishment of two new ones in its place on sub-dividing its area.*—The old Board dissolved was that for Nandurbar taluka and Navapur peta in the West Khandesh district and those established were one for the Nandurbar taluka and the other for the Navapur peta.

The Notification by which this was done was that bearing No. 9402/29 (f).

(4) *Selection of quite new areas and the establishment of new Boards for them by Notification No. 9402/39 (d).*—The said areas were as follows :—

(1-3). Dhandhuka taluka and Gogho peta, Parantij taluka and Modasa peta, Viramgam taluka and Sanand peta in the Ahmedabad District.

(4-5). Matar and Mehemdabad talukas, and Thasra and Kapadvanj talukas in the Kaira district.

(6-7). Wagra taluka, and Godhra taluka, and Halol peta in the Broach and Panch Mahals district.

(8-9). \*Mandvi taluka and Valod peta, and Jalalpore taluka and Chikhli peta in the Surat district.

(10-13). Shrigonda taluka and Karjat peta, Nagar and Parner talukas, Ankola and Sangamner talukas, Newasa and Shegaon talukas and Pathardi peta in the Ahmednagar district.

(14-17). Satara and Javli talukas, Khatav and Man talukas, Patan taluka and Shirala peta, and Wai taluka and Mahableshwar peta in the Satara district.

(18-19). Indupur taluka and Dhond peta, and Sirur peta, in the Poona district.

(20-21). Madha and Karmala talukas, and Malsiras taluka in the Sholapur district.

(22-23). Chopda, Yawal and Raver talukas, and Jamner and Pachora talukas in the East Khandesh district.

(24). Taloda and Shahada talukas in the West Khandesh district.

(25-26). Kalwan and Baglan talukas, and Dindori taluka and Peint peta in the Nasik district.

(27-30). Athni taluka, Chikodi taluka, Gokak taluka, and Hukeri taluka in the Belgaum district.

(31-32). Bijapur taluka and Bilgi peta, and Muddebihal and Bagewadi talukas in the Bijapur district.

(33). Gadag taluka and Mundgi peta in the Dharwar district.

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\* This Board was re-constituted with effect from 20-12-45 by the addition of 14 villages of the Bardoli taluka.

(34-37). Khed taluka and Mandangad peta, Chiplun and Sanga. meshwar talukas, \*Rajapur taluka, and \*Devgad taluka in the Ratnagiri district.

(38-39). Mahad and Mangaon talukas, and Roha and Pen talukas in the Kolaba district.

(40). Yellapur and Haliyal talukas in the Kanara district. All these were single-officer Boards set up under S. 4 (3) (i) (a) and no assessors were appointed to assist any of them.

SS. 4-6, 8-16, 18, 21-22, 24, 26-30, 35-36, 38-44, 46, 48, 50-52, 54-62, 64, 67, 67A-72, 73A-75, 78-81, 84-86 and 33 (1) of the Act were extended to and put into operation with effect from 1-5-45 in all the newly-selected areas by R. D. Notification No. 9402/39 published at pp. 44-45 of Pt. IVB, of the *B. G. G. Extraordinary* dated 28-4-45.

In the same issue of the *Gazette* there appeared at p. 45 R. D. Notification No. 9402/39 (a) extending to and putting into operation the newly-added sections 67A and 73A of the Act in the areas for which Boards had been established between 1st January, and 20th April, 1942.

SS. 4-6 and the others specifically mentioned in the last but one paragraph above were extended to and put into operation with effect from 1st June 1945 in the Lanja and Kankavli mahals of the Ratnagiri district by R. D. Notification No. S. 127/15116 dated 22nd May 1945 published in Pt. IVB of the issue of the *Gazette* dated 24th May 1945 and in the Sakri taluka of the West Khandesh district by R. D. Notification No. S. 127/25467 dated 10th October 1945 published in Pt. IVB of the *Gazette* dated 18th October 1945.

III. The whole Act of 1946 (Bom. Act II of 1946) was applied to the Partially-Excluded Areas in the Province of Bombay by R.D. Notification No. 1166/45 dated 14th February 1946 published in Pt. IVA of the *Gazette* dated 10th February 1946.

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\* These two Boards were dissolved and fresh Boards for the same areas with the addition of Lanja peta to Rajapur taluka and Kankavli peta to Deogad taluka were set up by R. D. Notification No. 127/15116 dated 1-6-45 published in Pt. IVB of the *Gazette* of the same date.



IV. The sections of the Act which had been extended to and put into force in the areas for which new Boards had been established by R. D. Notification No. 9402/39 dated 28-4-45 were extended to and put into force in the areas below-mentioned with effect from *1st February 1947* by R. D. Notification No. S. 127/53309 dated 11th January 1947 published in Pt. IVB of the *Gazette, Extraordinary* bearing the same date.

The said areas are :—

(1-3). City taluka, Dholka taluka, and Daskroi taluka, in the Ahmedabad district.

(4). South Salsette taluka in the Bombay Suburban district.

(5-7). Broach taluka, Ankleshwar taluka, and Jambusar taluka, in the Broach district.

(8-9). Nadiad and Anand talukas, and Borsad taluka, in the Kaira district.

(10-12). Olpad taluka, Chorasi taluka, and Bardoli taluka (except the 14 villages to which the Act had already been applied), in the Surat district.

(13-17). Thana taluka, Kalyan taluka, Palghar and Vada talukas, Bhiwandi taluka, and Bassein taluka, in the Thana district.

(18-21). Rahuri taluka [except (i) the 5 villages transferred from the Sangamner to the Rahuri taluka and (ii) one village transferred from the Nagar to the Rahuri taluka], Koregaon taluka (except the two villages transferred from the Sangamner to the Kopergaon taluka), Belapur taluka [except (i) the 18 villages transferred from the Newasa to the Belapur taluka and (ii) the 20 villages transferred from the Sangamner to the Belapur taluka], and Jamkhed peta, in the Ahmednagar district.

(22-26). Bhusawal taluka and Edalabad peta, \*Amalner and Parola talukas, Erandol taluka, Jalgaon taluka, Chalisgaon taluka and Bhadgaon peta, in the East Khandesh district.

(27-28). Dhulia and Shindkheda talukas, and, Shirpur taluka, Akrani mahal and Mewas area, in the West Khandesh district.

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\* The Court at Amalner though within the revenue district of East Khandesh is within the judicial district of West Khandesh.

(29-32). Nasik and Igatpuri talukas, Malegaon and Nandgaon talukas, Sinnar and Niphad talukas, and Yeola and Chandor talukas, in the Nasik district.

(33-36). Poona city and Haveli talukas and Mulshi peta, Bhimthadi taluka, Mawal taluka, and Purandhar taluka, in the Poona district.

(37-41). Walva taluka, Karad taluka, Khanapur taluka, Tasgaon taluka, and Koregaon taluka, in the Satara district.

(42-44). Sholapur North and Sholapur South talukas, Barsi taluka, and Mohol taluka [except (i) the 43 villages transferred from the Madha to the Mohol taluka and (ii) the 16 villages transferred from the Pandharpur to the Mohol taluka], in the Sholapur district.

(45-46). Belgaum and Khanapur talukas and Changad peta, and Sampgaon and Parasgad talukas, in the Belgaum district.

(47). Bagalkot, Badami and Hungund talukas in the Bijapur district.

(48-50). Dharwar and Kalghatgi talukas, Hubli and Bankapur talukas, and Karajgi, Ranebennur, Hangal and Kod talukas, in the Dharwar district.

(51-55). Karwar and Ankola talukas, Supa peta, Sirsi, Siddapur and Mundgod talukas, Kumpta taluka, and Honavar taluka and Bhatkal peta, in the Kanara district.

(56-59). Panvel taluka and Uran peta, Karjat taluka, Alibag taluka, and Khalapur taluka (except the 37 villages transferred from the Pen to the Khalapur taluka), in the Kolaba district.

(60-64). Malvan taluka, Vengurla taluka, Ratnagiri taluka, and Guhagar taluka, in the Ratnagiri district.

Simultaneously with the above it was announced on the 1st February 1947, (1) that the Government of Bombay had decided to appoint Civil Judges to function as Debt Adjustment Boards for the said new areas, and (2) that the establishment of such Boards in those areas with effect from *1st February 1947* completed the process of the extension to and of the putting into operation in the whole Province (except the City of Bombay) of the whole of the Act. This process had been commenced from *1st January 1942*.

## APPENDIX II.

### TABLE SHOWING CERTAIN COMMON FEATURES OF THE PROVINCIAL DEBT LAWS.


( See Section XII of the Introduction )

Nature of the Common feature	Sections of the Provincial debt laws concerned
1. Appointment of special tribunals for granting relief.	<p>(a) Debt Adjustment Boards.—S. 4 of Bom. Act XXVIII of 1939.</p> <p>(b) Debt Conciliation Boards.—S. 3 of both C. P. Act II of 1933 and Sind Act IX of 1941.</p> <p>(c) Debt Relief Courts.—S. 5 of C. P. Act XIV of 1939.</p> <p>(d) Debt Settlement Boards.—S. 3 of Bengal Act VII of 1936.</p>
2. Power to set aside adjustments and agreements, re-open accounts and make them up according to prescribed method.	<p>(a) S. 42 (2) of Bom. Act XXVIII of 1939.</p> <p>(b) S. 10 of C. P. and Berar Act XIV of 1939</p> <p>(c) S. 8 of Bihar Act VII of 1939.</p> <p>(d) S. 11 of Orissa Act III of 1939.</p> <p>(e) SS. 36-38 of Bengal Act X of 1940.</p> <p>(f) S. 9 of U. P. Act XIII of 1940.</p> <p>(g) SS. 36-37 of Sind Act XIV of 1944.</p>
3. Direction to 'cut down the rate of interest agreed upon to a prescribed rate.	<p>(a) S. 42 (2) of Bom. Act XXVIII of 1939.</p> <p>(b) SS. 4,5,8, and 9 of Assam Act IV of 1934</p> <p>(c) S. 5 of Punjab Act VII of 1934.</p> <p>(d) SS. 3 and 10 of C. P. Act XIII of 1934.</p> <p>(e) SS. 28-31 of U. P. Act XVII of 1934.</p> <p>(f) S. 3 of C. P. Act XXXII of 1936.</p> <p>(g) S. 10 of C. P. and Berar Act XIV of 1939</p> <p>(h) SS. 9-10 of Orissa Act III of 1939.</p> <p>(i) S. 10 of U. P. Act XIII of 1940.</p> <p>(j) SS. 11-12 of Sind Act VIII of 1940.</p> <p>(k) S. 17 of Sind Act IX of 1941.</p>

4. Re-opening and modification of past unsatisfied decrees on making up accounts according to a prescribed method.	<p>(a) <i>SS 42 (2) and 46 of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>S. 11 of C. P. Act XIII of 1934.</i></p> <p>(c) <i>SS. 3 and 26A of C. P. Act XXXII of 1936.</i></p> <p>(d) <i>S. 19 of Mad. Act IV of 1938.</i></p> <p>(e) <i>S. 8 of U. P. Act XIII of 1940.</i></p> <p>(f) <i>S. 13 of Sind Act VIII of 1940 as amended by Act XIX of 1943.</i></p> <p>(g) <i>SS. 33-34 of Sind Act XIV of 1944.</i></p>
5. Differential provisions as to making up accounts of debts incurred before or after certain dates.	<p>(a) <i>S. 42 (2) of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>SS. 3-7 of C. P. Act XIII of 1934.</i></p> <p>(c) <i>S. 7 of Punjab Act VII of 1934.</i></p> <p>(d) <i>SS. 8-9 of Mad. Act IV of 1938.</i></p> <p>(e) <i>S. 10 of C. P. and Berar Act XIV of 1939.</i></p> <p>(f) <i>SS. 4-12 of Sind Act VIII of 1940.</i></p>
6. Sealing down of debts.	<p>(a) <i>S. 52 of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>SS. 7-14 of Mad. Act IV of 1938.</i></p> <p>(c) <i>SS. 4-12 of Sind Act VIII of 1940.</i></p>
7. Compulsory declaration of a debtor as an insolvent in certain circumstances.	<p>(a) <i>S. 68 of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>S. 21 of Mad. Act IV of 1938.</i></p> <p>(c) <i>S. 15 of Sind Act VIII of 1940.</i></p>
8. Restraints on the debtor's power of alienation of his property.	<p>(a) <i>SS. 65 and 77 of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>S. 21 of Mad. Act XI of 1936.</i></p> <p>(c) <i>S. 25 of Mad. Act IV of 1938.</i></p> <p>(d) <i>SS. 12-26 of U. P. Act XIV of 1940.</i></p>
9. Setting aside transactions re. immovable property on the ground of fraud etc.	<p>(a) <i>S. 49 of Bom. Act XXVIII of 1939.</i></p> <p>(b) <i>SS. 23-24 of Mad. Act IV of 1938.</i></p> <p>(c) <i>S. 26 of Sind Act IX of 1941.</i></p>

There are some other points of similarity between the certain provisions in the Bombay Act and those in the Acts of some other Provinces but they are of minor importance

The policy underlying the Bombay Act is to encourage parties to come to terms amicably as is evident from SS. 19, 23, 24 and 25. Where that is not possible the Boards are directed by it to proceed according to the provisions of SS. 38-72. Some of the other Provinces have adopted another method. It is that of imposing a duty on the Debt Conciliation or Debt Settlement Board to attempt to bring about a fair settlement between a debtor and his creditors and investing them with power to make a fair offer binding on the other creditors if those representing 40 to 50% of the total liabilities of the debtor agree to it. Those Provinces and the relevant provisions of the above nature are those contained in (1) SS. 4-15 of C. P. Act II of 1933; (2) S. 14 of Mad. Act XI of 1936; (3) S. 19 of Ben. Act VII of 1936 as amended by S. 11 of Act VIII of 1940 and (4) S. 14 of Sind Act IX of 1941.





# THE BOMBAY AGRICULTURAL DEBTORS RELIEF ACT, 1939.

## CONTENTS OF SECTIONS

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No.	Topic dealt with
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### *Chapter I. Preliminary*

1. Short title, extent and commencement.
2. Definitions.
3. Savings.

### *Chapter II. Constitution and Powers.*

4. Constitution of the Board.
5. Removal of Board or member.
6. Extent of Board's powers.
7. Procedure before Board.
8. Judicial nature of proceedings.
9. Appeals to Courts.
10. Limitation for appeals.
11. Court-fees on appeals.
12. Grounds of appeal.
13. Procedure in appeals.
14. Finality of decision in appeal.
15. Control over Board.
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### *Chapter III. Procedure for adjustment of debts.*

17. Application for adjustment.
18. Form and verification of application.
19. Filing of statements by creditors and debtors on service of notice without filing application.
20. Application by debtor jointly and severally liable.
21. Position of assignees of non-debtors.
22. Statements of debts to be included in application.
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26. Maximum total amount of debts of one debtor which can be adjusted or settled.

27. Withdrawal of applications.
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30. Continuation of proceedings on death of party.
31. Service of notice on debtors and creditors by the Board to file statements.
32. Extinguishment of certain debts.
33. Duties of debtors and creditors.
34. Board's power to summon witnesses.
35. Decision of preliminary issues.
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43. Adverse presumption to be drawn in case of non-production of books.
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49. Fraudulent alienations or incumbrances.
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51. Paying capacity of a debtor.
52. Scaling down of debts payable by a debtor.
53. Irrecoverability of claims in excess of amounts ascertained by scaling down.
54. Direction to make an award and provisions to be followed while making it.
55. When and how Board should prepare a scheme for payment to creditors through the Bom. Prov. Co-op. Land Mortgage Bank.
56. Option not to scale down a debt in case of collusion.
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60. Provisions as to payment of court-fee on award.
61. Transmission of award to Court.
62. Registration of award.
63. Method of execution of award.
64. Postponement of payments of instalments in case of remissions etc.
65. Prohibition of alienation by debtor before discharge without sanction.



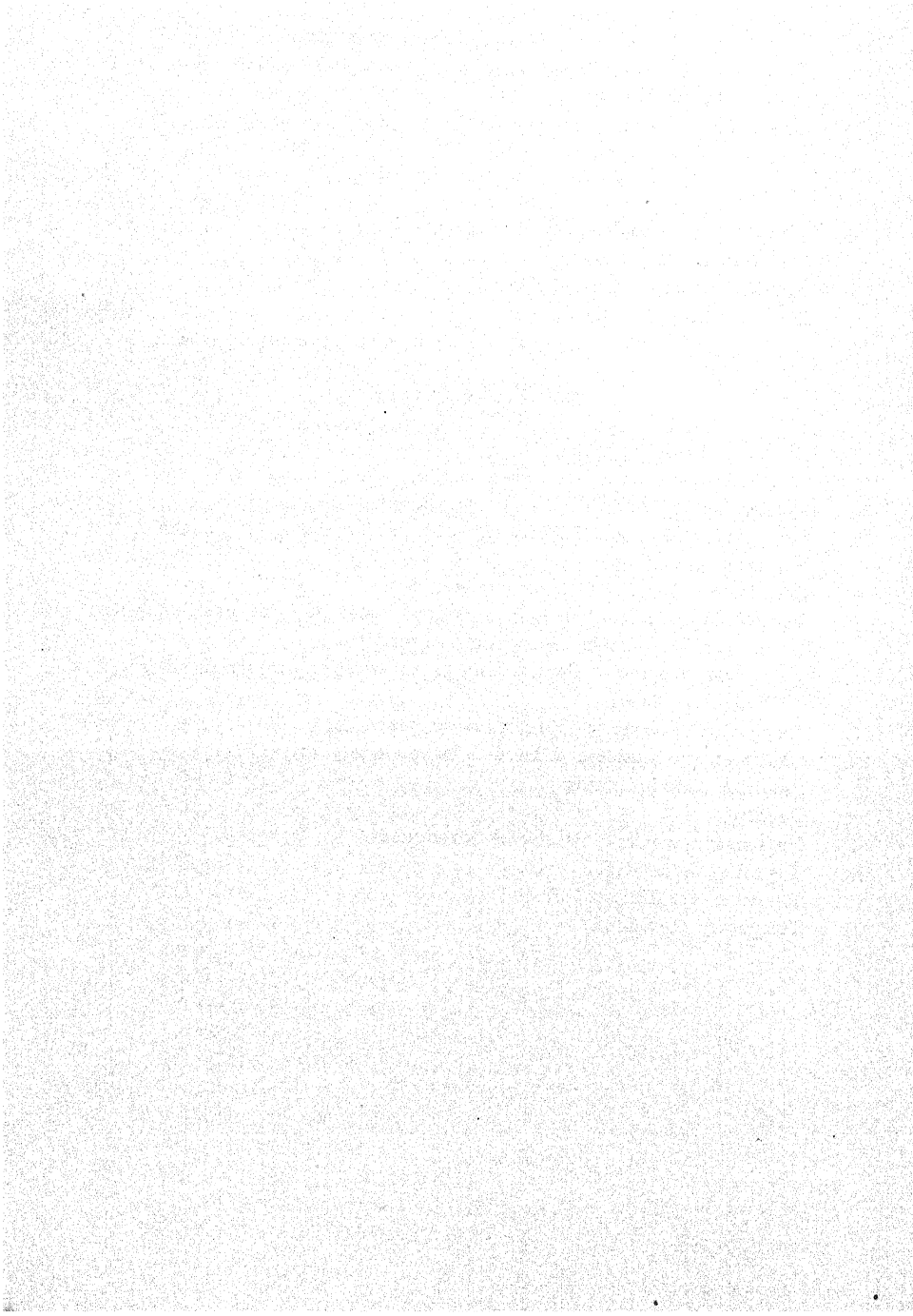
- 66. Power to order interim sale of part of debtor's property.
- 67. Exclusion of pleaders etc. from appearance except in certain cases after getting permission.
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*Chapter IV. Insolvency Proceedings.*

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  - 84. Repeal of Bom. VIII of 1938.
  - 85. Repeal of Act XVII of 1879.
  - 86. Temporary provisions.
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# BOMBAY ACT XXVIII OF 1939

[ 30th January 1940 ]

( *The Bombay Agricultural Debtors Relief Act, 1939*  
*as Amended by Bombay Acts VI of 1941,*  
*VIII of 1945 and II of 1946* ).\*

AN ACT TO PROVIDE FOR THE RELIEF OF AGRICULTURAL DEBTORS  
IN THE PROVINCE OF BOMBAY.

Whereas it is expedient to provide for the relief of  
agricultural debtors in the Province of  
[ Preamble. ]  
Bombay and for certain other purposes  
specified herein ; It is hereby enacted as follows :—

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\* The original Act had received the assent of the Governor-General for which it had been reserved, on 19th January 1940 and was first published at pp. 2-44 of Pt. IV. of the issue of the B. G. G dated 30th January 1940. The Amending Act of 1941 having received the assent of the Governor of Bombay was first published at pp. 82-84 of the same part of the issue of the same gazette dated 29th March 1941. The Amending Act of 1945 having received the assent of the Governor-General was first published at pp. 38—51 of the same Part of the issue of the same Gazette dated 21st April 1945. The Amending Act of 1946 having received the assent of the Governor-General was first published at pp. 57—60 of the same part of the issue of the same gazette dated 14th February 1946. The sanction of the Governor-General cures any defect of repugnancy that may have crept into the Acts of 1939 and 1945 owing to there being in any of them any provision repugnant to an existing provision in an Act of the Central Legislature relating to a subject found included in either List II or List III in Schedule No. VII to the *Government of India Act, 1935* as noted by the Federal Court in *Shyamakant Lal v. Rama Bhajan Singh* ( 1 F. C. R. 193 ) and *Jagadish Jha and others v. Aman Khan* ( 2 F. C. R. 7 ). It does not cure any such defect if the subject-matter dealt with in any of the provisions of the Acts is not found in any of the said two lists but is found in List I, on the subjects included in which the Central Legislature alone has the power to make laws. Such a defect was noticed by the Federal Court in the cases of *Bank of Commerce Ltd. v. Khulna Kunja Bihari Kar and others* ( A. I. R. 1945 F. C. 2. ). Hence it was that the Governor-General promulgated Ordinance No. XI of 1945, which remains in force till 31st March 1947. For further clarification on this point see the Commentary on that Ordinance ( Appendix V ).

*Bombay Act XXVIII of 1939*:—This is a short title by which this Act can be conveniently referred to. It is not however the authorised “short title” of the Act. That is found in S. I (1). The number XXVIII shows that this was the 28th Act passed by the legislature of the Province of Bombay in the year 1939.

*Text of an Act*:—A question sometimes arises as to which should be understood to be the authoritative text of an Act, especially when there is a difference between any two or more published copies of the same Act. In the case of *Rai Brindabun Prasad v. Mahabir Prasad*<sup>1</sup> such a question did actually arise and their Lordships of the Patna High Court ruled therein that the text of an Act published in the Official Gazette of the Government concerned must be taken to be the authoritative one even though it may be found to be defective in some respects.

*An Act to provide for the relief of agricultural debtors in the Province of Bombay*:—This is the “full title” of this Act. It mentions in a succinct form the purpose which the legislature had in view in passing it. That purpose was to make legislative provision for relieving the debtors of the agricultural class in the Province of Bombay from the state of indebtedness into which they have fallen for a long time owing to several causes. The Royal Commission on Agriculture presided over by Lord Linlithgow had considered this problem under the heading *Agricultural Indebtedness* in para 63 of Chapter II, entitled *The Finance of Agriculture*, of its Report published in 1928 and while recognising the facts that “the problem is one of the oldest that have troubled administrators in the East and the West for generations past” and that “it had received the continuous and anxious consideration of the Government of India”<sup>2</sup>, it also noticed that the *Usurious Loans Act, 1918*, had not proved very successful in many of the provinces of India<sup>3</sup> and that the *Dekkhan Agriculturists Relief Act, 1879* was being evaded<sup>4</sup> and suggested that an

1. A. I. R. 1927 Pat. 142.

2. Main Report of the R. C. A., 1928, p. 431.

3. Op. cit. pp. 438-39.

4. Op. cit. and Abridged Report of the R. C. A. p. 49.

inquiry should be made into the causes of the failure to utilise the provisions of the *Usurious Loans Act, 1918*, that legislation on the lines of the *Punjab Money-lenders' Bill* (since passed as the *Punjab Regulation of Accounts Act, 1930*) and the *British Money-lenders Act of 1927* should be made and that the case for a simple Rural Insolvency Act should be examined, in all the provinces.<sup>5</sup> The Central Banking Inquiry Committee, which was appointed shortly thereafter, appointed Provincial Sub-Committees for making the same kind of inquiry and the Bombay Provincial Banking Inquiry Committee, which was one of them, examined the subject of agricultural indebtedness very carefully and exhaustively. Going as far back as 1852, the date of the report of Captain G. Wingate, a Revenue Survey Commissioner, in which he drew the attention of Government to the increasing indebtedness of the land-holders and warned it that if things did not alter the greater part of the property of the community would be transferred to a small-moneyed class and the bulk of the population would be impoverished," they pathetically observe that in spite of attempts made from time to time to check this mischief the indebtedness had gone on increasing to such an extent that "the total agricultural debt of the whole province thus works out at Rs. 81,00,00,000 approximately." This they attributed to four causes, namely:—(1) the existence of small and scattered holdings; (2) the lack of subsidiary industries in the rural areas; (3) the proverbial vagaries of the monsoon on which the greater part of the agricultural population depended and (4) the habit of the illiterate agriculturists to stick to pernicious social customs and to incur expenditure on ceremonies far beyond their means.<sup>6</sup> They further proceeded to examine the reasons why the indebtedness went on increasing and how ultimately the landed properties passed from the natural tillers of the soil to the money-lenders.<sup>7</sup> When they came to the question of remedies, they went into the history of the passing of the *Dekkhan Agriculturist Relief Act, 1879*, referred to the inquiries made from time to time as to its working and ultimately stated:— "That the Act has produced evil effects almost everywhere is

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5. Op. cit. para. 369 at pp. 442-43.

6. Report of the B. P. B. I. Committee, Vol. I, Paras. 49-55 at pp. 39-47,

7. Op. cit. paras. 55-60 at pp. 47-51.

admitted by most if not by all" and referring to the several opinions expressed by the Hon'ble Judges of the Bombay High Court and the Judicial Commissioner's Court in Sind as to what should be done to counteract its influence they recommended "that the Act should be repealed and a new Act embodying the principles which we mention in the subsequent paragraphs should be passed."<sup>8</sup> Those principles are:—

- (1) "The new enactment should apply only to small and genuine agriculturists.....The definition of "agriculturist" will have therefore to be substantially modified. We do not attempt ourselves to suggest a new definition but we recommend that the benefit of the Act should be confined to those who actually engage personally in agriculture and whose income is below a certain specified figure which should not be high."<sup>9</sup>
- (2) "*The Usurious Loans Act, 1918* not being sufficiently comprehensive, the new Act should contain provisions tending to check usurious practices effectively."<sup>10</sup>
- (3) "Money-lenders should be compelled to take out licences for carrying on their trade by passing an Act on the lines of the *Punjab Regulation of Accounts Act, 1930*."<sup>11</sup>
- (4) "The provisions of *Provincial Insolvency Act, 1920* being unsuited to the rural conditions, a special simpler Rural Insolvency Act should be passed as recommended by the Royal Commission on Agriculture."<sup>12</sup>

A comparison of these principles with the provisions of SS. 2 (6) read with SS. 2 (5) (8) and (12) to (14), 20, 21, 23, 24, 26, 35, 40, 42, 44, 45, 49-53, 54, 55, 59, 64, 65, 66, 68-72 and 85-86 will show that the Bombay Legislature has made a *bona fide* attempt to give effect to the said recommendations as they had been accepted also by the Central Banking Inquiry Committee.<sup>13</sup>

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8. Op. cit. paras. 237-38 at pp. 179-81.

9. Op. cit. para. 241 at p. 182.

10. Op. cit. para. 241 at pp. 183-84.

11. Op. cit. paras. 242-43 at pp. 184-86.

12. Op. cit. para. 244 at pp. 187-88.

13. Majority Report of L. C. B. I. Committee, Vol. I, pp. 42-59.

*Title as an aid to interpretation.*—As the title of an Act comprises the purpose the legislature has in view in passing it, it is natural that it may at times be called into aid when some doubtful provisions of that Act are to be construed. When such is the case the following rules deduced from the decided cases on that point would be found useful, namely :—

(1) It is legitimate to use the full title of an Act in order to throw light upon its progress and scope but it is not legitimate to use the short title for that purpose, its object being identification and not description.<sup>14</sup>

(2) The full title should not be neglected in case of a doubt as it may be some guide to the meaning sought to be ascertained.<sup>15</sup>

(3) Sole dependence should not however be placed upon it for the purpose of interpreting a section and in no case can it be made use of to restrict, modify or enlarge the scope of the section when its wording is clear.<sup>16</sup>

[*Preamble*]:—This word has been deliberately put into brackets because there is no marginal note to the words “Whereas it is expedient &c.”, which constitute the preamble of this Act. The term “preamble” has been derived from the French word “preamble” which is again derived from the Latin words “præ,” before and “ambulo,” I go and means “an introduction, or a preface or a prelude” in ordinary parlance and “the introductory part which states the reason and intent of the law” in legal language.

It will be seen on a comparison of the wording of this preamble and that of the full title above discussed that besides the purpose of “providing for the relief of agricultural debtors in the Province of Bombay” the legislature had in view “certain other purposes” also in passing this Act and that they are not referred to in the full title. There seems to be no judicial pronouncement as to which of the two, the full title or the preamble, should be relied on in such a case. However one can easily come to the conclusion that preference must be given to the preamble because a title, even though full, is

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14. *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593, 621).

15. *Op. cit.*

16. *Abdulla Khan v. Bahram Khan* (A. I. R. 1935 Pesh. 69),

after all a convenient way of referring to an Act by mentioning the principal feature thereof and does not form part of the Act itself whereas a preamble is intended to set forth the real purpose or purposes in the mind of the legislature while passing the enactment. As ruled in the case of *Kedar Nath v. Pearey Lal*,<sup>17</sup> the key to the opening of every law is the reason and spirit of the law and it is the preamble more especially that should be looked to for "the reason and spirit of every statute," which is the same thing as "the meaning of a statute" spoken of by Maxwell in his famous work.<sup>18</sup>

*Preamble as an aid to interpretation.*—It would be interesting and useful to know the different views expressed in judicial decisions as to the use that can be made of a preamble. The High Court at Bombay had put the matter too high when it ruled in one case that the preamble should not be referred to for the purpose of construing a section and yet the Privy Council had in appeal confirmed that ruling.<sup>19</sup> However what that court must be deemed to have meant is that it is only when the language of a section is clear and unambiguous that the preamble should not be referred to, as ruled by the Madras and Calcutta High Courts. The principles that can be deduced from their rulings and those of other High Courts may be summarised thus:—

(1) It is not legitimate to refer to the preamble of an Act when the language of a section to be construed is clear and unambiguous.<sup>20</sup>

(2) When the language of a section is ambiguous, it can be referred to in order to understand that language and to clear an ambiguity or avoid an absurdity which cannot have been intended.

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17. A. I. R. 1932 Oudh. 152, 153, F. B. following *Brett v. Brett*, 3 Ad. 210, 216.

18. *Interpretation of Statutes*, 7th edition, pp. 37-38. See, also *Official Assignee v. Chimniram* (34 Bom. L. R. 1615, 1628); *Gavarannammal v. Manikkammal* (I. L. R. 57 Mad. 718).

19. *Municipal Commissioner v. Mancherji* (I. L. R. 36 Bom. 405); *Abdul Rahim v. Municipal Commissioner* (I. L. R. 42 Bom. 462 P. C.).

20. *Ramireddi v. Sreeramulu* (A. I. R. 1933 Mad. 120); *Corporation of Calcutta v. Kumar Arun Chandra* (Appeal—A. I. R. 1934 Cal. 862); *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593, 620); *Jnamendra Nath v. Jadu Nath* (A. I. R. 1938 Cal. 211, 214).



It is therefore in such a case looked upon as a key to open the minds of the makers of the Act and to ascertain the mischief which they may have intended to redress,<sup>21</sup> but not to restrict, modify or enlarge its scope<sup>22</sup> or to create an ambiguity.<sup>23</sup>

(3) When the language of a section is so general that it can be inferred that the legislature must have intended to have some limitation put upon it, the preamble can be referred to in order to ascertain what particular class of cases the enactment was intended to apply to.<sup>24</sup>

(4) When it is clear that there is a conflict between the preamble and a section of an Act, the well-established rule is that the section must be given a preference<sup>25</sup> for the courts are not concerned with what the legislature has stated in the preamble as the reason for the legislation but what it has already done, which may be a little more than that.<sup>26</sup>

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21. *Bhola Prasad v. Emperor* (A. I. R. 1942 F. C. 17, 21) *Mon Mohan v. Raghu Nandan* (A. I. R. 1941 Pat. 465, 466-67); *Taher Ally v. Chanbusappa* (A. I. R. 1943 Bom. 226); *Finch v. Finch* (A. I. R. 1943 Lah. 260, 264); *Manohar Lal v. Emperor* (A. I. R. 1943 Lah. 1, 2); *Darbar, Patiala v. Firm, Narain Das* (A. I. R. 1944 Lah. 302, 308); *Arulayi v. Antonimuthu* (A. I. R. 1945 Mad. 47, 49).

22. *Mani Lall Singh v. Trustees for the Improvement of Calcutta* (I. L. R. 45 Cal. 343); *Kameshwar Singh v. Rampat Thakur* (A. I. R. 1938 Pat. 607) wherein the ruling in *Powell v. Kempton Park Race Course Co.* (1897) 2 Q. B. D. 242 has been relied on; *Bhola Umar v. Mt. Kausilla* (A. I. R. 1932 All. 617); *Mt. Savitri Devi v. Dwarika Prasad* (A. I. R. 1939 All. 305); *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593, 620); *Maung Ba Thaw v. M. S. Chettyar* (A. I. R. 1935 Rang. 460, 462); *Mt. Rajpali v. Surju Rai* (A. I. R. 1936 All. 507 F. B.); *Abdulla Khan v. Bahram Khan* (A. I. R. 1935 Pesh. 69); *Amrut v. Mt. Thagan* (A. I. R. 1938 Nag. 134 F. B.). For the English rule on the same point see *Maxwell on the Interpretation of Statutes*, 7th edition, pp. 39-40.

23. *Jnanendra Nath v. Jadu Nath* (A. I. R. 1938 Cal. 211, 214); *Municipal Commissioner v. Mancherji* (I. L. R. 36 Bom. 405, 410).

24. *Kannammal v. Kanaksabai* (A. I. R. 1931 Mad. 629).

25. *Badar Rahim v. Bad Shah Mian* (A. I. R. 1934 Cal. 741); *Rajmal v. Harman Singh* (A. I. R. 1928 Lah. 35); see also *Maxwell on the Interpretation of Statutes*, 7th edition, pp. 39-40.

26. *Thyrammal v. Junus Chettyar* (A. I. R. 1936 Mad. 844, 848).

(5) In no case can the language of a section be strained either way to give effect to the intention as expressed in the preamble.<sup>27</sup>

*Character of this legislation*--The said preamble shows that the Legislature has taken cognizance of the facts which the Royal Commission on Agriculture and Central and Provincial Banking Inquiry Committees have found to have been established, and that it has realised the necessity to grant statutory relief to the agricultural debtors in this province on the lines laid down by the Provincial Committee. Further a careful scrutiny of the provisions of this Act as a whole or a determination of the "pith and substance" thereof, which according to the ruling in *Atiga Begum v. Abdul Maghni Khan*<sup>28</sup> is the proper test for determining the nature and character of any legislative enactment, will show that the legislature has in this Act made a sincere attempt to grant such relief without being unduly harsh to the creditor-class and with due regard to the principles of equity, justice and good conscience.

This is thus what is called a "Remedial Act". There are certain well-established rules for the interpretation of such Acts deduced from judicial decisions. As I feel that the Boards and the Courts charged with the duty of giving effect to its provisions would in certain contingencies find them useful I state them below.

(1) A remedial Act seeking to remove or mitigate what the legislature regarded as a mischief ought to receive a beneficial interpretation, *i. e.* to say it should be so interpreted as to suppress the mischief aimed at and to advance the remedy provided by it.<sup>29</sup>

(2) Accordingly the words used therein should be generally understood in their popular and not too technical or strictly grammatical sense according to the view of the Calcutta High Court.<sup>30</sup>

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27. *Mahomed Husen v. Jaimini Nath* (A. I. R. 1938 Cal. 97, 101).

28. A. I. R. 1940 All. 272, 280 F. B.=3 F (-ederal) L (-aw) J (-ournal) 83.

29. *The United Provinces v. Musamat Atiga Begum and others* (1940) 2 F. C. R. 110; *Ram Prasad v. Sajan Mahto* (A. I. R. 1943 Pat. 16, 17), a case under the *Bihar Money-lenders Act, 1939*; *In re the Hindu Women's Right to Property Act, 1937* (A. I. R. 1941 F. C. 72, 77); *Kameshwar Singh v. Arjun Misser* (A. I. R. 1941 Pat. 35, 37 F. B.); *Diwan Singh Maftoon v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62); *Shidramappa v. Neelavabai* (A. I. R. 1933 Bom. 272, 274).

30. *Soleman v. East India Company* (I. L. R. 60 Cal. 820).

(3) The Bombay High Court too has expressed the same view in its judgments in the cases of *Govind v. Srinivas*<sup>31</sup> and *Bombay Namdeo Co-operative Agency Ltd. v. Virdhaval*<sup>32</sup>.

(4) The Madras High Court too seems to be of the same view, it having ruled in one case that when a statute provides for a special remedy for the enforcement of substantial rights it must be so construed as to give effect to those rights<sup>33</sup>.

The mischief aimed at in this Act is the heavy indebtedness of the agricultural class in this province and the remedy provided for its removal consists of a simple procedure by which all the necessary inquiries can be made, all the necessary information can be gathered and all the necessary orders can be passed for the eradication of the evil within a reasonable time. Therefore this Act must as a whole be so construed as to tend to check the indebtedness of the said class and to bring the remedy provided by it within the reach of all those agriculturists, who according to a reasonable interpretation of the provisions of S. 2 (6) read with S. 2 (5), (8), (12) to (14), S. 20 and S. 26 fall within the purview of the Act.

The proposed object of all the Remedial Measures passed in the other provinces which have been mentioned in Appendix IV being the same as of this and that object not being achievable without making therein provisions affecting some of the vested rights created by the Central Legislature to a more or less extent and others which give retrospective effect to some of those of the previous class, and that of the Preventive Measures also mentioned in the same Appendix being to prevent a recurrence of the mischief sought to be eradicated by the measures of the former class, which too could not be done without making some such provisions therein as are above referred to, I believe, those who have to deal with this Act would appreciate a reference here to the decisions of the Federal Court as to the nature of the relation established between it and the High Courts in the different provinces and those as to the legality or otherwise of the provisions

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31. A. I. R. 1937 Bom. 275, 278.

32. A. I. R. 1937 Bom. 266, 271.

33. *Palani Goundan v. Paria Goundan* (A. I. R. 1941 Mad. 158, 160).

of the one or the other of the classes mentioned above which are contained in the Acts made in the other provinces in this connection.

*Relation between the Federal Court and the Provincial High Courts.*—The relation between the Federal Court and the High Courts of British India bears no resemblance to that between the High Courts and the Courts subordinate to them and the former has no statutory powers of revision or superintendence like those possessed by the High Courts over the Subordinate Courts. Acting on this principle that court refused to entertain an application for the revision of an order of a High Court refusing to grant a certificate under S. 205 (1) of the *Government of India Act, 1935*<sup>34</sup>. It was also on the same principle that it refused in another case<sup>35</sup> to interfere with the exercise of its discretion by a High Court unless it appeared that the High Court had not applied its mind at all to the question before it, or had acted capriciously or in disregard of some legal principle or was influenced by some extraneous considerations wrong in law and to substitute its own discretion for that of the High Court.

*Provisions affecting vested rights created by the Central Legislature and those giving retrospective effect to some of them:—*

(a) *The Madras Agriculturists Debt Relief Act, 1938 (Mad. Act IV of 1938).*

1. The Madras High Court had held in *Nagaratnam v. Sheshayya*<sup>36</sup> that the above Act was *ultra vires* the Provincial Legislatures inasmuch as it trenched upon a federal subject, namely legislation affecting the liability arising from promissory notes which were negotiable instruments governed by the *N. I. Act, 1881*. But *In re. Reference under Or XLVI. r. I. of the C. P. Code, 1908*<sup>37</sup> the Federal Court held that the said Act was not *ultra vires* the Madras Provincial Legislature although it contained provisions as to the

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34. *Pasupati Bharati v. The Secretary of State for India* [(1939) F. C. R. 13; (S. C.) F. L. J. 1.

35. *Jai Gobind Singh and Others v. Lachmi Narain and Others* (1940) F. C. R. 61.

36. A. I. R. 1939 Mad. 361, 365.

37. *In re-Reference under Or. 46 r. 1* (1940) F. C. R. 39.

scaling down of debts and interest due on promissory notes and other negotiable instruments which were repugnant to the provisions of the *N. I. Act, 1881*, the *U. I. Act, 1918* and the principles of Hindu Law. Against that decision an appeal was made to the Federal Court and it held (i) that the Act in question related in substance to "agriculture," a subject reserved for the Provincial Legislature and to "money-lending" which was also a subject reserved for that Legislature and the fact that in particular cases it might operate to reduce liability on contracts evidenced by negotiable instruments and affect the discretion given to courts by the Usurious Loans Act cannot affect its validity.

(ii) Even if the matters dealt with under the Act did not come within the exclusive powers of the Provincial Legislature, the Act can be supported on the ground that it related to "contracts" falling within the Concurrent Legislative List.

(iii) The Provincial Legislatures have power to legislate with regard to "contracts" and as no exception has been made in regard to contracts entered into by Hindus the Act was not invalid on the ground that it was in conflict with the rule of Hindu law imposing a pious obligation on the son to discharge his father's debts.

(2) In another case under the same Act<sup>38</sup> the Federal Court again held that the said Act was not wholly beyond the competence of the Provincial Legislature and that its subject-matter was covered by the one or the other of the entries in Lists II and III of Schedule VII to the Constitution Act. Speaking particularly as to the effect thereof on the rights arising out of negotiable instruments their Lordships say:—"The pith and substance of the Madras A. D. R. Act cannot be said to be legislation with respect to negotiable instruments and the Act cannot be challenged as invading the field of List I." And with reference to the particular facts of the case and S. 19 of the said Act they ruled:—"The provisions of S. 19 of the Madras Act relating to decrees passed before the date of commencement of the Act were not beyond the competence of the Provincial Legislature and as the original debt had in this case merged in the decree even before the enactment of that

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38. *Subrahmanyam Chettiar v. Muthuswami Goundan* (1940) F. C. R. 188.

legislation, the Act cannot in this case be held to affect the operation of a negotiable instrument merely on the ground that the debt was originally due under a promissory note.

(b) *Bihar Money-lenders Act, 1939* (Bihar Act VII of 1939).

In a case in which the validity of the provisions contained in S. 7 of the above Act was challenged<sup>39</sup>, the Federal Court held that the said section re-enacted S. 11 of the *Bihar Money-lenders Act, 1938* (III of 1938) and as this Act was passed in conformity with the procedure prescribed in S. 107 (2) of the *Government of India Act, 1935* its validity is not open to question and that as the case was governed by the New Act, it was not necessary to decide whether S. 11 of the Act of 1938 was or was not void. The same two points were also decided in the same manner in another case under the same Act which went up to the same court from Patna<sup>40</sup>.

(c) *Regularization of Remissions Act, 1938* (U. P. Act XIV of 1938).

The Allahabad High Court had held this Act to be *ultra vires* the Provincial Legislature of the United Provinces as in its view it was opposed to the provisions of S. 292 of the *Constitution Act*. On appeal, the Federal Court held (1) that S. 292 of the *Constitution Act* did not prevent legislatures in India from giving retrospective effect to measures passed by them; (2) that the impugned Act was within the competence of the Provincial Legislature as the subject-matter of legislation thereby was the "collection of rents" within the meaning of Entry No. 21 of List II and was not the less so because it related to remission of rent or was so framed as to protect invalid remission orders passed by the executive officers from being questioned in courts, and (3) that there is a general presumption that a legislature does not intend to exceed its jurisdiction.

(d) *Bengal Money-lenders Act, 1940* (Ben. Act X of 1940).

The above Act *inter alia* provided for the registration and licensing of money-lenders, fixed the maximum rate of interest and

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39. *Jagdish Jha and Others v. Aman Khan* (1940) F. C. R. 7.

40. *Ramnandan Prasad v. Kulapati Goswami Madhavanand* (1940) F. C. R. 1.

the total amount recoverable in respect of loans and gave the courts powers to re-open transactions and decrees in suits instituted on or after 1st January 1939 and in suits pending on that date, and to pass new decrees in such suits in accordance with the provisions of the Act. The term "loan" was so defined therein as to include advances made under promissory notes and even by banks other than the Scheduled and Notified Banks. The validity of the Act was impugned in certain cases in which decrees on promissory notes had been passed before the Act came into force, on the ground that it was legislation in respect of "promissory notes" and "banking" with respect to which the Federal Legislature had exclusive jurisdiction to legislate. It was held in a case under that Act from Bengal<sup>41</sup> (i) that the Act taken as a whole, fell within the description of legislation in respect of "Money-lending and Money-lenders," a subject within the exclusive competence of the Provincial Legislature and was not therefore *ultra vires*; (ii) that the fact that the Act covered also decrees passed on promissory notes after it came into operation could not affect the decision of cases in which decrees had been passed before the Act, inasmuch as the existence of the provisions relating to promissory notes did not render the Act invalid and the operation of such provisions had only to be determined by the application of the doctrine of repugnancy; (iii) that the provisions of the Act for re-opening decrees and passing new decrees did not mean that the parties were to be relegated to their rights and liabilities on the original cause of action but contemplated only a re-opening to the extent necessary for substituting the method of accounting sanctioned by the Act in place of the calculation on which the original decree was passed. *Subrahmanyam Chettiar v. Muthuswami Goundan* (1940) F. C. R. 188 followed.

It was also held in the same case that when there is a conflict between the provisions of a local law and those of a Central enactment, each being in reference to a subject on which it is authorised to legislate, it is the doctrine of repugnancy, not that of *ultra vires*, that has to be applied and that the question of severability arises only when an Act is to some extent *ultra vires*.

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41. *Bank of Commerce Ltd., Khulna v. Amulya Krishna Basu and Bank of Commerce Ltd., Khulna v. Brojo Lal Mitra* (1944) F. C. R. 126.

## CHAPTER 1

### PRELIMINARY

1. (1) This Act may be called the Bombay Agricultural Debtors Relief Act, 1939.

(2) This section and sections 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33 (2) 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82, and 83\* extend to the whole of the Province of Bombay. *The Provincial Government may, by notification in the Official Gazette, extend all or any of the remaining provisions of this Act to such area other than the City of Bombay, as may be specified in the notification.†*

(3) This section and sections 2, 3, 7, 17, 19, 20, 23, 25, 31, 32, 33 (2), 34, 37, 45, 47, 49, 53, 63, 65, 66, 73, 76, 77, 82 and 83 shall come into force at once. *The Provincial Government may, by notification in the Official Gazette, direct that all or any of the remaining provisions of this Act shall come into force in any area to which the said provisions have been extended under sub-section (2), on such date as may be specified in the notification.‡*

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\* The words and figures in italics were substituted by S. 2 (a) (i) of Act VI of 1941 for the figures and word 17, 23, 32, 37 and 73.

† The whole of this sentence in italics was substituted by S. 2 (a) (ii) of Act VI of 1941 for the words *and the rest of the Act shall extend to the whole of the Province of Bombay except the town and island of Bombay.*

‡ The whole of this sub-section in italics was substituted by S. 2 (b) of Act VI of 1941 for the following, namely :—

(3) *It shall come into force on such date as the Provincial Government may, by notification in the Official Gazette, appoint in this behalf.*

For the various notifications issued upto this time under S. 1 (2) and (3) see the Appendix to the Introduction.



## COMMENTARY.

*Bird's eye-view of the Act*.—This Act contains 86 original sections and two entirely new ones divided into 5 chapters of unequal length. This seems to have been due to the division having been based, as usual, on the principle that the sections relating to the main provisions (4-72) should be separated from those relating the preliminary (1-3) and the subsidiary or miscellaneous (73-86) ones.

Each of these chapters has a distinct heading given to it. Attempts are made at times to draw upon such a heading for ascertaining the exact import of any of the sections contained in the chapter which bears it. In such a case a question arises, for the decision of the court before which such an attempt is made, as to what weight can legitimately be attached to such a heading while trying to ascertain the correct interpretation of a section. In order to assist such a court in arriving at a correct decision of that question I state below the principles established by judicial decisions.

*Heading of a chapter as an aid to interpretation*.—(1) The Privy Council had ruled in the case of *Abdul Rahim v. Municipal Commissioner of Bombay*<sup>1</sup> that these headings being in the nature of a preamble cannot control the provisions of a section if they are clear and unambiguous. The Bombay, Allahabad and Rangoon High Courts<sup>2</sup> have followed this principle. But the Madras and Patna High Courts look upon them “as affording a better key to the construction of the sections which follow than might be afforded by a mere preamble<sup>3</sup>” and “helpful even in extending the scope of a section<sup>4</sup>.”

(2) Where there is an ambiguity in a section it can, according to all authorities, be legitimately cleared up with the help of the heading of the chapter in which the section occurs as it is looked

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1. I. L. R. 42 Bom. 462 P. C.

2. *Ramkrishna v. Bapurao* (A. I. R. 1938 Bom. 284); *Mt. Savitri Devi v. Dwarka Prasad* (A. I. R. 1939 All. 305); *Durga Thathera v. Narain Thathera* (A. I. R. 1931 All. 597); *Maung Ba Thaw v. M. S. Chettiar* (A. I. R. 1935 Rang. 469).

3. *Bachu v. Official Receiver, Madras* (A. I. R. 1938 Mad. 449, 454).

4. *Janaki v. Jagannath* (3 Pat. L. J. 1).

upon as a key to open the mind of the makers of the Act,<sup>5</sup> i. e. to say, as an indication of the intention of the legislature.

(3) Where however the effect of looking upon a heading of a chapter is to assign a meaning to the section, not intended by the legislature, as appearing from the other parts of the Act, more weight should be given to such intention than to the one as appearing from the heading alone<sup>6</sup>.

*Preliminary*.—One of the most fundamental rules of interpretation of statutes is that the words used therein are to be understood in their plain, ordinary or popular sense<sup>7</sup>. It is not rare however to find such a sense differing from the strictly grammatical or the purely etymological sense<sup>8</sup>. Such is not however the case here. The word “preliminary” is derived from the French word ‘preliminaire,’ which again is derived from the Latin words ‘præ’ before and ‘limen’ or ‘liminis’ a threshold. Hence the etymological meaning of the word under consideration is ‘anything which precedes the main business.’ When used in a literary composition it must therefore mean a preface or prelude which precedes the main discourse therein. In the case of a legal enactment it must mean the introductory provisions therein which precede the main provisions. The whole of Chapter I bears the heading ‘Preliminary’. It should therefore be understood that the provisions of the sections comprised therein, namely 1 to 3, are of a prefatory or introductory nature. As a matter of fact too they are such because S. 1 relates to the short title, extent and commencement of the

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5. *Debi Das v. Maharaj Rup Chand* (I. L. R. 49 All. 903); *Narayanswami v. Rangaswami* (A. I. R. 1926 Mad. 749); *Durga Thathera v. Narayan Thathera* (A. I. R. 1931 All. 597); *Ramkrishna v. Bapurao* (A. I. R. 1938 Bom. 284); *Mt. Savitri Devi v. Dwarika Prasad* (A. I. R. 1939 All. 365).

6. *Anand Lal v. Karnani Industrial Bank Ltd.* (I. L. R. 59 Cal. 528, 531-532).

7. *Anand Prakash v. Narain Das* (A. I. R. 1931 All. 162, 175-76); *Madan Mohan v. Commissioner of Income-tax, Punjab* (A. I. R. 1935 Lah. 742, 746); *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Anandi Lal v. Ram Sarup* (A. I. R. 1936 All. 495); *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504); *In re Jagmandar Das and Ors.* (A. I. R. 1935 All. 378); *Pearey Lal v. Soney Lal* (A. I. R. 1936 All. 222); *Darwood v. Sahabdeen* (A. I. R. 1937 Mad. 667); *Sobharam v. Jugmohan Singh* (A. I. R. 1936 Nag. 269).

8. *Bhim Raj v. Munia Sethani* (A. I. R. 1935 Pat. 243).

operation of the Act, S. 2 is the definition or interpretation clause containing the definitions of certain words used in the subsequent sections and S. 3 is a saving-clause excluding particular kinds of debts and liabilities from the operation of certain sections of the Act.

*What is a Section?* :—The word ‘section’ is derived from the French word ‘section,’ which is again derived from the Latin word ‘sectio’ or ‘sectionis’ meaning a cutting, both of which are derived from the Latin root ‘seco’ or ‘sectus,’ I cut. A ‘section’ therefore means either “the act of cutting” or “a part cut out and separated from the rest” or “a distinct part or portion of a writing or a book or of any of the chapters therein”. In legal enactments it means “one of the distinct parts or portions into which the enactment is divided.” When they are many they are grouped together into distinct chapters. Each such section generally deals with one topic connected with the subject-matter of the chapter.

*What is a sub-section;*—Just as a chapter is divided into sections so a section is sub-divided into two or more sub-sections dealing with different portions of the same topic. A sub-section therefore is a sub-division of a section dealing with a particular point relating to the topic dealt with in the section as a whole.

*Marginal notes* :—It will have been noticed that the words “Short title, extent and commencement” on the left of the section have been printed in smaller type than the provisions of the section. These words constitute what is called a “marginal” or “side” note to the section as a whole. There are similar notes printed similarly on the left-hand side of each of the other sections of this Act. Such marginal notes are found in all enactments. The object of the publisher in putting such notes is to enable the readers to know at a glance the topics dealt with in the respective sections to which they are attached. When the publisher is not a sufficiently intelligent man, it is quite likely that the import of such notes may be somewhat different from or wider or narrower than that of the section read as a whole. We will have occasions in the course of this commentary to notice such discrepancies. In such cases a question arises as to what value to attach to such notes in ascertaining

the scope of the sections. Such cases are not infrequent and therefore there is a good deal of case-law on that point.

*Marginal-note as an aid to interpretation*:—The case-law on this point can be summarised thus:—There is no difference of opinion amongst the judges of the different High Courts, who had occasions to consider the point, as to the position that these marginal or side notes do not form part of an enactment<sup>9</sup> and also as to another that they cannot be made use of in order to control the words of the statute.<sup>10</sup> But there is a wide divergence of opinion amongst even the judges of the same court as to whether they can be referred to at all while construing the sections to which they are prefixed. The learned judges who decided the case of *Dukhi Mulla v. Halway*,<sup>11</sup> were of opinion that they cannot be made use of as an aid to the interpretation of the sections, those who decided the cases of *Ram Saran v. Bhagwat Prasad*,<sup>12</sup> *Ganpatrao v. Emperor*<sup>13</sup> and *Jamnadas v. Damodardas*<sup>14</sup> and even the learned members of the Judicial Committee of the Privy Council who decided the case of *Balraj v. Jagatpal Singh*<sup>15</sup> held that they cannot be made use of for that purpose, those who delivered the judgments in the cases of *Abdul Hakim v. Fozu Mian*,<sup>16</sup> *Emperor v. Mumtaz Hussein*<sup>17</sup> and *Emperor v. Fulabhai*<sup>18</sup> expressed and acted upon the view that these notes can be referred to for an exposition of the meaning of a section when inserted by or under the authority of the legislature, those who

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9. *Dukhi Mulla v. Halway* (I. L. R. 23 Cal. 55).

10. *Balaji v. Gangamma* (A. I. R. 1927 Mad. 85); *Ramkrishna v. Bapurao* (A. I. R. 1938 Bom. 284) following *Attorney-General v. Great Eastern Railway Co.* (1879) 11 Ch. 449; *Narayanswami v. Rangaswami* (A. I. R. 1926 Mad. 749, 751); *Kusum Kumari v. Biseswar Lal* (A. I. R. 1935 Pat. 439, 443); *Maung Ba Thaw v. M. S. Chettiar* (A. I. R. 1935 Rang. 460).

11. I. L. R. 23 Cal. 55; *Shri Nath v. Puran Mal* (A. I. R. 1942 All. 19, 34); *In re Ratanji Ramji* (A. I. R. 1942 Bom. 397, 402); *Sushil Kumar v. Emperor* (A. I. R. 1943 Cal. 489, 494).

12. A. I. R. 1929 All. 53.

13. A. I. R. 1932 Nag. 174.

14. A. I. R. 1927 Bom. 474.

15. I. L. R. 26 All. 393 P. C.

16. A. I. R. 1935 Cal. 287, 289.

17. A. I. R. 1935 Oudh 337.

18. A. I. R. 1940 Bom. 363, 364.

decided the case of *Kameshwar Prasad v. Bhikan Narain Singh*<sup>19</sup> assumed that the Legislature must have authorised their insertion as they were found in the state publications of the Acts while those who decided the cases of *Gajendra Singh v. Durga Kumari*,<sup>20</sup> *Balaji v. Gangamma*,<sup>21</sup> *In re Natesa Mudaliar*,<sup>22</sup> *In re A. E. Smith*,<sup>23</sup> *Secretary of State for India v. Municipal Corporation of Bombay*<sup>24</sup> and *Muradan Sardar v. Secretary of State for India*<sup>25</sup> admitted their usefulness in the case of a doubt or an ambiguity, as showing the trend or drift of the sections as stated by Collins M. R. in his judgment in *Bushell v. Hammond*.<sup>26</sup> A similar view has been expressed by the Nagpur High Court in the case of *Chudaman Singh v. Kamta Nath*<sup>27</sup> in which there was a difference between the provisions of the new and the old Acts. In *Dharwar Urban Bank Ltd. v. Krishnarao*<sup>28</sup> Rangnekar J. of the Bombay High Court has discussed this point at some length although he has not reviewed the rulings in all the above cases and come to the conclusion that the one laid down by Collins M. R. in the above-mentioned case is the correct one and that these notes can be made use of for the purpose of construing Indian Statutes especially because the Privy Council had held so in the case of *Thakurani Balraj Kunwar v. Rae Jagatpal Singh*.<sup>29</sup> It must however be remembered that these notes cannot have a greater weight than the preamble of an Act or the headings of the chapters therein and the advice contained in the ruling in *Maung Ba Thaw v. M. S. Chettiar*,<sup>30</sup> namely that reliance

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19. I. L. R. 20 Cal. 609.

20. I. L. R. 47 All. 637 F. B.

21. A. I. R. 1927 Mad. 85.

22. A. I. R. 1927 Mad. 156.

23. A. I. R. 1924 Mad. 389.

24. A. I. R. 1935 Bom. 347, 349.

25. A. I. R. 1939 Cal. 313, 314. See also *Municipal Committee v. Wamanrao* (A. I. R. 1941 Nag. 292, 293); *Vishindas v. Emp.* (A. I. R. 1944 Sind 1, 12); *Shib Nath v. Porter* (A. I. R. 1943 Cal. 377, 412).

26. (1904) 2 K. B. 563.

27. A. I. R. 1939 Nag. 230.

28. A. I. R. 1937 Bom. 198, 202.

29. 38 I. A. 132—26 All. 393 P. C.

30. A. I. R. 1935 Rang. 460.

merely on a marginal note in order to construe a section is not desirable, is a sound one.

*Sub-section (1):*—This sub-section contains the short title by which this Act can be conveniently referred to. It is an authoritative one because it is contained in a sub-section of the Act. As for the value to be attached to it in the matter of the interpretation of the sections of the Act vide the Commentary under the heading *Title as an aid to interpretation*.

*Sub-section (2):*—Although it is stated in the full title and the preamble of this Act that the object of the legislature was to give relief to the agricultural debtors of the whole of the Province of Bombay, this sub-section defines the exact extent of the Act. For this purpose it has been divided into two parts, namely one comprising the 26 sections specified therein and the other the remaining 60. Those in the first part are extended to the whole of the Province of Bombay and as regards those in the second it is provided that the Provincial Government may, in its discretion, extend all or any of them to any area other than the City of Bombay, by a notification published in the *Official Gazette*.<sup>31</sup> It is remarkable that the area of the City of Bombay is specifically excluded from the areas to which all or any of the remaining provisions of the Act can be extended under this sub-section by a notification and that S. 4 under which a Debt Adjustment Board can be established in any area is not one of the 23 sections which extend to the whole of the Province of Bombay. The result of this will be that if there is a person residing in Bombay answering to the description of a debtor under this Act he will be entitled to take advantage of the provisions of SS. 17, 19 and 23, which *inter alia* have been extended to that city, only if a Debt Adjustment Board is established for an area in which he holds lands used for agricultural purposes and he will have to do so only through such a Board.

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31. It is worthy of remark that this sub-section as it originally stood did not authorise the Provincial Government to divide the Act into parts and extend one part to some area, a second to another and a third to a third, which seems to have been thought necessary in view of the remedy provided by the Act being an untried one.

*Sub-section (3) :—*This sub-section as it now stands authorises the Provincial Government to put into operation all or any of the sections of the second group above-mentioned in any area to which the same may be extended under the amended sub-section (2). This will enable it to try the effect of some of the new sections in one area and certain others in another area and so on.

*Sub-sections (2) and (3) considered together.—*A little reflection on the wording of these sub-sections will make it clear that the former relates to the extension of certain specified sections to and the latter to the coming into force at once of the same specified sections in the whole of the Province of Bombay and that the former authorises the Provincial Government to extend by a notification in the Official Gazette all or any of the remaining provisions of the Act to any such area other than the City of Bombay as may be specified in the notification and the latter authorises it to put those provisions into force in such area in a similar manner. Looking further at the numbers of the sections specified in both one can see that some of the operative important sections 4, 6, 15, 16, 18, 22, 24, 33 (1), 35, 38 to 44, 50 to 52, 54 and several others are not among them. Therefore when the Provincial Government decides to set up a D. A. Board for any particular area in the Province or for any class of debtors in such area, it must extend those sections to such area and put them into force therein by a notification published in the Official Gazette.

For the numerous notifications issued under these sub-sections see the Appendix to the Introduction.

*Authoritativeness of a Government Notification :—*It should be noted in the above connection that the Provincial Government is bound to issue a notification and publish it in accordance with the provisions of the statute from which it derives its authority to issue it and that therefore when, as it sometimes happens, a notification issued by it is in conflict with the provisions of the Act under which it purports to have been issued, the courts would give effect to the words of the enactment and hold the notification to be *ultra vires*, for, as held in the case of *Laxman-*

rao v. Balkrishna,<sup>32</sup> a Government notification cannot have a higher operation than a legislative enactment.

In connection with this sub-section relating to the commencement of this Act it should be borne in mind that this Act has been thrice amended, once by Bom. Act VI of 1941, for the second time by Bom. Act VIII of 1945 and for the third time by Bom. Act II of 1946. This sub-section has remained unaffected by any of them. However those Amending Acts themselves came into operation on the respective dates on which they were first published in the Official Gazette. This follows from the facts that they do not contain the mention of any particular dates for their commencement but each of them contains just below the title a remark in italics within brackets as to the date on which it was first published in the Official Gazette after it received the assent of the final authority. This remark has been made pursuant to the provisions of S. 6 of the *Bombay General Clauses Act, 1904* (Bom. Act I of 1904) and according to those of S. 5 (1) thereof "when any Bombay Act is not expressed to come into operation on a particular day, then it shall come into operation, if it is an Act of the Legislature, on the day on which the assent thereto of the Governor, Governor-General or His Majesty, as the case may require, is first published in the Official Gazette, and if it is an Act of the Governor, on the day on which it is first published as an Act in the Official Gazette."

It deserves to be noted further in connection with the operation of Bombay Act VIII of 1945 that according to S. 40 thereof, all the amendments made thereby, except those made by S. 2 (ii) (a), (c) and (d), S. 3 (ii), Ss. 8 and 10, S. 13 (ii), Ss. 14 and 16 and S. 23 (1), "shall apply to proceedings for the adjustment of debts pending before a Board at the date of the coming into operation of this Act" and since it came into operation on 21st April 1945, the orders to be passed under any of the sections which have been amended and made applicable to the proceedings for the adjustment of debts pending before the Boards established prior to 21st April 1945, must be in conformity with the sections as amended.



But since the words used in S. 40 of the said Act are "proceedings for the adjustment of debts," and proceedings under S. 23 do not belong to that category, the amendments made in S. 23 (4) by S. 9 of that Act would not apply to the proceedings for the settlement of debts initiated under S. 23 (1) of the parent Act before 21st April 1945. The consequence is that in those proceedings awards must be made under S. 54 and court-fee must be charged thereon under S. 60 of the said Act.

*Legal presumptions of a general nature*:—It would not be out of place here to draw the attention of the reader to certain presumptions of a general character on which, according to certain judicial decisions, a court can and should proceed while interpreting an enactment, whether of the Central or a Provincial Legislature. They are—

1. It must be presumed that the legislature does not commit mistakes, because it is an ideal person.<sup>33</sup>
2. It must be presumed that a Provincial Legislature had acted within its authority in passing an Act and had no intention to exceed it.<sup>34</sup>
3. It must be presumed that a legislature did not intend to repeal an earlier Act by a later one.<sup>35</sup>
4. The *ejusdem generis* rule raises a presumption that a general provision following a special one in the same Act was intended to be understood in the restricted sense conveyed by the latter.<sup>36</sup>
5. It is to be presumed that different senses were intended to be applied to analogous expressions in different statutes.<sup>37</sup>
6. When the words to be construed are capable of being construed in more ways than one, it is to be presumed that the legislature intended that out of them to be adopted which serves to avoid

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33. *Madho Singh v. James Skinner* (A. I. R. 1942 Lah. 243, 251).

34. *Darbar, Patiala v. Firm, Naraindas* (A. I. R. 1944 Lah. 302, 309).

35. *Wilcox v. Patel* (A. I. R. 1942 Rang. 30, 35-36); *Nagendra Chandra v. Prabhat Chandra* (A. I. R. 1942 Cal. 607, 609).

36. *Maxwell's Interpretation of Statutes*, 7th Edn., pp. 288-89; *U. P. Government v. Mon Mohan Das* (A. I. R. 1941 All. 245).

37. *K. N. Kulkarni v. Ganpat Teli* (A. I. R. 1942 Bom. 191, 192-33).

inconvenience and is consistent with reason, justice and legal principles.<sup>38</sup>

7. If one thing of a class is mentioned it is generally presumed that the others not belonging to the same genus and description are excluded but this rule known technically as *expressio unius est exclusio alterius* is not of universal application.<sup>39</sup>

It should not moreover be forgotten in proceeding on any of these presumptions that by their very nature they are capable being rebutted by convincing proofs to the contrary.

2. In this Act, unless there is anything repugnant  
Definitions. in the subject or context—

(1) "Award" means an award made by the Board under Sections 24, 54 or 55 or as confirmed or modified by the Court under section 9.

(2) "Board" means a Debt Adjustment Board established under section 4.

(3) "Co-operative Society" means a society registered or deemed to be registered under Bom. VII of 1925. the provisions of the *Bombay Co-operative Societies Act, 1925*.

(4) "Court means—

(a) in sections 17, 61 and 63 and where the word "Court" occurs for the first time in sub-section (1) of section 62, the District Court to which an appeal lies against the award of a Board under section 9;

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38. *Teja Singh v. Emperor* (A. I. R. 1945 Lah. 154, 158). *Zamurrad Hussain v. Ram Sarup* (A. I. R. 1943 All. 281, 282); *Emp. v. Turab Khan* (A. I. R. 1942 Oudh 39, 44-45).

39. *Shidrao v. Narayanrao* (A. I. R. 1943 Bom. 21, 23).

(aa) *in sections 13, 14, 66, 67A, 75 and 83 where the word "Court" occurs for the second time in sub-section (1) of section 62, a District Court, a Court of the Assistant Judge or a Court of the First Class Subordinate Judge as the case may be, hearing an appeal against the award of a Board under section 9,\* and*

(b) in the remaining provisions wherever the expression occurs the Civil Court of competent jurisdiction.

(5) "Debt" means any liability in cash or kind whether secured or unsecured, due from a debtor whether payable under a decree or order of any civil court or otherwise but does not include arrears of wages payable in respect of agricultural or manual labour.

(6) "Debtor" means—

(a) an individual —

(i) who is indebted;

(ii) who holds land used for agricultural purposes;

(iii) who has been cultivating such land personally from a date prior to 1st April 1937;

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\* The whole of clauses (a) and (aa) of sub-section (4) was substituted by S. 2 (i) of Bom. Act VIII of 1945 for the original clause (a) which stood thus:—

(a) *in section 13, 14, 17, 61, sub-section (1) of section 62, 63, 66, 75 and 83 a District Court or a Court of the First Class Subordinate Judge to which an appeal lies against the award of a Board under section 2;*

*\*Provided that in relation to a Board established after the commencement of the*

*Bombay Agricultural Debtors Relief*  
Bom. VIII of 1945.

*(Amendment) Act, 1945, paragraph (iii) of sub-clause (a) shall be construed as if for the words, figures and letters "from a date prior to 1st April 1937" the words "for the two cultivating seasons immediately preceding the date of establishment of the Board concerned" were substituted;*

- (iv) whose annual income from sources other than agriculture and manual labour does not ordinarily exceed 20 per cent. of his total annual income or does not exceed rupees 300, whichever is greater;

*† Provided that a person who is temporarily engaged in one of the Defence Services shall be deemed to have been personally cultivating land used for agricultural purposes as required by this sub-clause, if he had been cultivating such land personally at the commencement of the first of the two cultivating seasons immediately preceding the date of establishment of the Board concerned or the date of joining the Defence Service, whichever may be earlier.*

*Explanation.—For the purposes of this sub-clause the income from salary of a person temporarily engaged in one of*

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\* This proviso was added by S. 2 (ii) (a) of Bom. Act VIII of 1945.

† This proviso and explanation were added by S. 2 (ii) (b) of Bom. Act VIII of 1945.

*the Defence Services shall be excluded in computing his income from sources other than agriculture and manual labour.*

(b) an undivided Hindu family—

( i ) which is indebted;

( ii ) which holds land used for agricultural purposes ;

( iii ) which has been cultivating such land personally from a date prior to 1st April 1937 ;

*\* Provided that in relation to a Board established after the commencement of the*

*Bombay Agricultural Debtors Relief*  
Bom. VIII of 1945.

*(Amendment) Act, 1945, paragraph (iii) of sub-clause (b) shall be construed as if for the words, figures and letters "from a date prior to 1st April 1937" the words "for the two cultivating seasons immediately preceding the date of establishment of the Board concerned" were substituted;*

( iv ) the annual income of which from sources other than agriculture and manual labour does not ordinarily exceed 20 per cent. of its total annual income or does not exceed Rs. 500, whichever is greater.

*Explanation I.*—For the purposes of this clause "Agriculture" includes horticulture, the raising of crops or garden produce, dairy farming, poultry farming, stock-breeding and grazing, but does not include leasing of land or cutting only of grass or wood.

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\* This proviso was added by S. 2 (ii) (c) of Bom. Act VIII of 1945.

*Explanation II.*—For the purposes of this clause, a person who personally cultivated land used for agricultural purposes on 1st April 1937, but who has been evicted from such land at any time thereafter, shall be deemed to have been cultivating such land personally, if at the date of the application under section 17 or 23 he is cultivating land personally.

*\* Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, Explanation II shall be construed as if for the words, figures and letters "on 1st April 1937" the words "at the commencement of the first of the two cultivating seasons immediately preceding the date of establishment of the Board concerned" were substituted.*

Bom. VIII of 1945.

(7) "Financing of crops" means advancing of loans for the raising of crops during the ploughing season or later for ploughing, sowing, harrowing, weeding, harvesting purchase of seeds, manure or for such other purposes as may be prescribed, such loans being re-payable during the season when the crops for which the loans were advanced are harvested.

(8) "Holder" means a holder as defined in section 3 (11) of the *Bombay Land Revenue Code, 1879*, and includes a holder of land held for the performance of services useful to Government or village community, which service is actually being performed but does not include—

Bom. V. of 1879.

(a) a holder of any other alienated land which cannot be alienated without the sanction of Government, and

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\* This proviso was added by S. 2 (ii) (a) of Bom. Act VIII of 1945.

(b) a holder of any land held on behalf of a religious or charitable institution,  
and the expression "to hold land" shall be construed accordingly.

+ (8 A) "*Person*" includes an undivided Hindu family;

(9) "*Prescribed*" means prescribed by rules.

(10) "*Resource Society*" shall have the same meaning as it has in the *Bombay Co-operative Societies Act, 1925*.

(11) "*Rules*" means rules made under section 83.

+ (11 A) "*Scheduled Bank*" means a bank included in the *Second Schedule to the Reserve Bank of India Act, 1934*.

II of 1934.

(12) "*Secured debt*" means a debt due to a creditor from his debtor for which the creditor holds the property of the debtor or any part thereof as security.

(13) "*To cultivate personally*" means to cultivate by one's own labour or by the labour of any member of one's family or by servants or hired labour under one's personal supervision or the personal supervision of any member of one's family.

*Explanation 1.*—If a person who was cultivating personally dies leaving as his heir a widow or a minor or a person who is subject to physical or mental disability, such heir shall be deemed to cultivate the land personally notwithstanding the fact that the land is cultivated on behalf of such heir by servants or hired labour or by tenants.

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+ Sub-sections (8 A) and (11 A) were inserted by S. 2 (iii) and (iv) respectively of Bom. Act VIII of 1945.

*Explanation II.*—In the case of an undivided Hindu family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family. If there are no adult co-parceners in such family capable of cultivating the land personally, such family shall be deemed to be cultivating the land personally if the land is cultivated on behalf of such family by servants or hired labour or by tenants.

(14) "Unsecured debt" means a debt which is not a secured debt.

(15) The expressions "District Judge," "Joint Judge," "First Class Subordinate Judge" and "Special jurisdiction" have the same meanings as are assigned to them in the *Bombay Civil Courts Act, 1869*.

(16) The words and expressions used in this Act, but not defined have the meanings assigned to them in the *Code of Civil Procedure, 1908*, *Bom. V of 1879*, or the *Bombay Land Revenue Code, 1879*, as the case may be.

## COMMENTARY

*Definition-clauses.*—This section constitutes what is usually known as the definition-clause or the interpretation-clause of the Act. Such a clause occurs in all legislative enactments unless they are intended merely to amend other statutes in force and the amending portion does not introduce any new words. The purpose of adding such a clause in all enactments of the above-mentioned class is to make it plain to all whom it may concern in what senses the particular words occurring in the different parts of the statutes are to be understood, whatever may be their ordinary, grammatical or popular meanings. Moreover there are the General Clauses Acts of the Central and Provin-



cial Legislatures which contain certain general rules of construction. The General Clauses Act for the Province of Bombay is Bom. Act I of 1904. In cases falling under any of them the courts have no discretion in construing the relevant words but have to understand them in the prescribed sense except when there is a clear case of repugnance arising out of the nature of the subject or the context, in which case according to the section itself they can assign another suitable meaning to the word<sup>1</sup>. The following principles will be found useful in coming to a decision in such cases.

*Reference to context.*—Now, questions of context and repugnance can arise in two classes of cases, namely (1) when one and the same expression which has been defined is found at several places in the same Act<sup>2</sup> and (2) when the word or expression under consideration is capable of two meanings.<sup>3</sup> As for the former class of cases, the primary rule is that the same words or set of words occurring in different parts of the same statute must be understood in the same sense throughout in order to bring about harmony.<sup>4</sup> But there are at

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1. *Official Liquidators v. Jugal Kishore* (A. I. R. 1939 All. 1). *Srinath v. Purnan Mal* (A. I. R. 1942 All. 19, 22); *Manohar v. Jagadish Chandra* (A. I. R. 1942 Cal. 357, 359); *Supdt. of Insurance v. Navabharat Insurance Co.* (A. I. R. 1943 Bom. 81, 82); *Bhaiyalal v. Savai Singhai* (A. I. R. 1944 Nag. 152, 153).

2. *Commissioner of Income-tax, Madras v. Ibrahimsa* (A. I. R. 1928 Mad. 543, 544).

3. *Secretary of State v. Khan Chand* (A. I. R. 1935 Lah. 492); *Nidhusudan v. Bibhabati* (A. I. R. 1940 Cal. 395).

4. *Aghore Chandra v. Rajanandini Debi* (A. I. R. 1933 Cal. 283) in which reference is made to the ruling in the English cases of *River Wear Commissioners, v. Adamson* (1877) 2 A. C. 743 and *Eastman Photographic Materials Co., Ltd. v. Comptroller of Patents, Designs and Trade-marks* (1898) A. C. 571; *Seva Ram v. Prabhu Dayal* (A. I. R. 1935 Oudh 313); *Someshwar v. Manilal* (34 Bom. L. R. 206) in which *Maxwell's Interpretation of Statutes*, 7th Edn. pp. 2—3 and 19 are relied on; *Sat Narain v. Mahavir Prasad* (A. I. R. 1939 Pat. 392); *Rangiah v. Appaji* (A. I. R. 1927 Mad. 163); *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 439 F. B.). See also *Spencer v. Metropolitan Board of Works* (22 Ch. D. 142); *Madan Gopal, In re the Income-tax of* (A. I. R. 1935 All. 494); *Emperor v. Nana Sahu* (A. I. R. 1943 Bom. 209, 212); *Zamir Qasim v. Emperor* (A. I. R. 1944 All. 136, 142); *Arjun Rautara v. Krishna Chandra* (A. I. R. 1942 Pat. 1, 27-28); *Prafalla Kumar v. Kamini Kumar* (A. I. R. 1942 Cal. 476, 478).

times special reasons for assigning different meanings to the same word or expression even when it occurs in different parts of the same statute. The desire to give effect to a supposed or speculative intention of the legislature should not be one of them.<sup>5</sup> As regards the second class of cases, the primary rule is that if the language of the section, in which the word having a double meaning occurs, is clear the literal meaning of the word is to be preferred.<sup>6</sup> In such cases it becomes necessary to construe more than one section together in place of the sub-sections, if any, of the same section<sup>7</sup> or even the scheme of the Act as a whole<sup>8</sup> in order to gather the intention of the legislature but in doing so *a priori* considerations should not be imported,<sup>9</sup> for it would be to frustrate the intention of the legislature to create or imagine an ambiguity where in fact none exists,<sup>10</sup> it not being the duty of the courts to follow an intention which cannot be gathered from the plain words of a statute according to one of the rules of judicial interpretation which has been fairly well established.<sup>11</sup> Another of such rules recognised by the Privy Council is that "the words used in an Act of Parliament are presumed to have been used correctly and exactly, that the burden of proving that this rule has been broken lies heavily on those who make such an assertion and that this burden can be discharged by a reference to something in the context from which it can be inferred that the loose and inexact meaning must be preferred."<sup>12</sup> When

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5. *Neelikandi v. Kunhayissa* (A. I. R. 1936 Mad. 158); *Chidambara v. Rama* (A. I. R. 1937 Mad. 385 F. B.); *Ishwar Singh v. Allah Rakh* (A. I. R. 1936 Lah. 698).

6. *Musammat Uda Bai v. Ram Avatar Singh* (A. I. R. 1935 Lah. 423).

7. *Ashutosh Ganguli v. Watson* (I. L. R. 53 Cal. 929), referring to and relying on *Craies on Statute Law*, 3rd Edn., p. 194.

8. *Nihal Singh v. Siri Ram* (A. I. R. 1939 Lah. 388); *Nidhusudan v. Bibhabati* (A. I. R. 1940 Cal. 395). See also *Bentley v. Rotherdam and Kimberworth Local Board of Health* (1876) 4 Ch. D. 588; *Warburton v. Loveland* (1831) 2 D. and Cl. 480.

9. *Nadar Fateh Sher v. Musamat Karam* (A. I. R. 1936 Pesh. 160).

10. *Municipal Commissioner v. Manchherji* (I. L. R. 36 Bom. 405, 410).

11. *Musamat Mohammadi v. Emperor* (A. I. R. 1932 All. 110).

12. *Borough of New Plymouth v. Taramaki Electric Power Board* (A. I. R. 1933 P. C. 216) in which the English case of *Spillers Ltd. v. Cardiff (Borough) Assessment Committee* (1931) 2 Q. B. 21 has been referred to.

the present tense has been used in a definition the court can determine from the Act as a whole and the context to what particular time it is intended to apply<sup>13</sup>.

*Reference to subject.*—(1) *Other Acts not in pari materia.*—Ordinarily the meaning of a word used in a statute should be ascertained without reference to any other Act unless it is in *pari materia* with it<sup>14</sup>; nay, it is always dangerous to do so.<sup>15</sup> It is much more so when the other Act is an Act passed by another Provincial Legislature than that which passed the one under consideration.<sup>16</sup> Nevertheless it becomes necessary and is permissible in certain contingencies to make reference to such an Act. Such contingencies are :—

- (1) When the Act to be construed is passed by the same legislature which had passed a *General Clauses Act* in force at the time of interpretation or when an occasion arises for reference to the *General Clauses Act, 1897* of the Indian Legislature, wherever the same is applicable.<sup>17</sup>
- (2) When it is alleged that the legislature intended to make substantial changes in the existing law by the new enactment,<sup>18</sup> as is the case with this Act vis-a-vis the *Deccan Agriculturists Relief Act, 1879*, the presumption in such a

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13. *Ganeshi Lal v. Shiam Lal* (A. I. R. 1943 All. 190), a case under the U. P. Agrt. R. Act. (XXVII of 1934).

14. *Govind Ram v. Kashi Nath* (A. I. R. 1936 All. 239) where the *Indian Stamp Act, 1899* and the *Indian Registration Act, 1908*, were not held to be in *pari materia*; *Abdul Rahim v. Syed Abu Mohammad* (A. I. R. 1928 P. C. 16); *Madhavrao v. Panna Lal* (A. I. R. 1938 Nag. 292).

15. *Nippon Yusen v. Ramjiban* (A. I. R. 1938 P. C. 152, 158); *Kameshwar Singh v. Kulada Prasad* (A. I. R. 1935 Cal. 732); *Emperor v. Aftab Mohammad Khan* (A. I. R. 1940 All. 291); *Pran Krishna v. Jnanananda* (A. I. R. 1942 Cal. 47, 48), *Sri Ram v. Firm, Chandra Sen* (A. I. R. 1943 Oudh 413, 414).

16. *Emperor v. Khin Maung* (A. I. R. 1933 Rang. 275); *Mt. Siraj Fatima v. Mohammad Ali* (A. I. R. 1932 All. 293). The ruling in the latter case disapproves of reference to judicial decisions while interpreting the words of a statute not in *pari materia* with that to be construed.

17. *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630).

18. *Abdul Rahim v. Syed Abu Mohammad* (A. I. R. 1928 P. C. 16).

case however being that the legislature did not intend any change.<sup>19</sup>

- (3) When the same words or expressions are used in a subsequent enactment<sup>20</sup> as is the case with this Act and the *Bombay Tenancy Act, 1939*.
- (4) When the other Act deals with a somewhat, though not exactly, similar subject and the object in referring to it is to point out the difference between the two enactments<sup>21</sup> *e. g.* that between the provisions of this Act and any of the Acts of the Bengal, Bihar, Punjab, C. P., Sind or Madras Legislature passed with a similar object, namely that of granting relief to heavily-indebted agriculturists.

(2) *Other Acts in pari materia*.—As regards Acts in *pari materia*, they should be construed together as one system and as explanatory of each other<sup>22</sup> and all possible attempts should be made to avoid repugnance between them.<sup>23</sup> In the case of such Acts of the same legislature such a construction should be made on the presumption that the legislature was aware of the state of the law when it made the new Act and that it could not have intended to alter the law which it could not affect as in the case of that contained in an Act of Parliament.<sup>24</sup> Further if the words or expressions used in the Act to be construed are found to have been taken bodily from another enactment in *pari materia* with it and those words or expressions had received a judicial interpretation it must be presumed

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19. *Cassim and Sons v. Sara Bibi* (A. I. R. 1936 Rang. 17).

20. *Purna Chandra v. Biswas* (A. I. R. 1936 Cal. 64, 65).

21. *G. N. Asundi v. Virappa* (A. I. R. 1939 Bom. 221).

22. *Mahomed Bagar v. Mahomed Kasim* (A. I. R. 1932 Nag. 210).

23. *Khan Gul v. Lakha Singh* (A. I. R. 1928 Lah. 609); *Satnarain v. Emperor* (A. I. R. 1942 All. 440); *Ram Prasad v. Sajan Mahto* (A. I. R. 1943 Pat. 394); *Sham Singh v. Vir Bhan* (A. I. R. 1942 Lah. 102, 103).

24. *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 444 F. B.) where the Act under consideration was the *Bengal Agricultural Debtors Act* (VII of 1936); See also *Nagaratnam v. Seshayya* (A. I. R. 1939 Mad. 361, 365); *Subrahmaniam Chettiar v. Mukhuswami Goundan* (3 F. L. J. 157); *United Provinces v. Musamat Atiqa Begum and Others* (1940 F. C. R. 110, 124).

that the legislature was aware of that interpretation and intended it to be followed in the subsequent enactment.<sup>25</sup> In construing the Act thus by reference to other Acts it should however be borne in mind that it is not permissible to strain unduly the language of the statute to be construed, in order to give effect to a supposed intention of the legislature.<sup>26</sup> Nor should technical words be interpreted by a reference to any other statute.<sup>27</sup>

(3) *Previous history of the law.*—This and the previous head are somewhat overlapping for two reasons:—(1) While Acts which are in *pari materia* with that, the words in which are to be construed, must include that, if any, which may have preceded it and has since been repealed or partially amended, the previous history of the law on a particular subject must also include such an Act. Still, since no other Act can, on the one hand, be included in the latter, the question of the legitimacy, on the other, of a reference to other Acts not included therein is a relevant subject for inquiry. And (2) since while, on the one hand, many more things besides the previous state of the law, such as the preliminary inquiry or inquiries which led to the drafting of the Bill, the Draft Bill itself, the Statement of objects and reasons accompanying it, the Speech of the Hon'ble Member or Members who may have moved the Bill in the Legislative Body or Bodies, the report, if any, of the Select Committee appointed to revise the Bill, the Bill as revised by it, the Minutes of the debates that may have taken place in the Legislative Body or Bodies, the Bill with the changes which may have been made in the provisions of the original Bill or in the Bill as returned by the Select Committee, are included in the import of the expression “Previous history of the law,” such things do not fall under

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25. *Radha Mohan v. Abbas Ali* (A. I. R. 1931 All. 294, 299); *Nagar Damodar v. Gange* (A. I. R. 1938 Mad. 638, 640) relying on *Grievs v. Tofteld* (1880) 14 Ch. D. 563; *Panchayat Board v. W. I. Matches Co.* (A. I. R. 1939 Mad. 421 F. B.).

26. *Mahomed Husen v. Jaimini Nath* (A. I. R. 1938 Cal. 97, 101).

27. *L. A. Adamson v. Melbourne and Metropolitan Board of Works* (A. I. R. 1929 P. C. 181).

the head "Other Acts." This head has therefore been considered separately.

And it too must be considered under two separate sub-heads, namely (a) Previous state of the law and (b) Previous preliminary proceedings, *i. e. to say*, the proceedings ending with the passing of the Act under consideration, which comprises all the stages commencing from a preliminary inquiry and ending with the debates at the third reading of the Bill in the Legislative Body or Bodies. Ordinarily it is the first sub-head which is otherwise named 'Previous history of the law' but that is the result of a looseness of phraseology and the other sub-head too must, in my view, be deemed to fall under the same head.

(a) *Previous state of the law* :—The rules deducible from the judicial decisions on this point are the following :—

- (1) When the language of a section is clear and unambiguous, reference to all internal and external evidence of the intention of the legislature, the latter of which comprises the previous state of the law, is absolutely barred, the said intention being in such a case required to be gathered from the language itself.<sup>28</sup>

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28. *Ishwar Singh v. Allah Rakh* (A. I. R. 1936 Lah. 698); *Gurudwara Nankhana v. Hira Das* (A. I. R. 1936 Lah. 298); *Govind Ram v. Perumal* (A. I. R. 1927 Mad. 327); *Mahomed Yakub v. Mt. Aziz-un-nissa* (A. I. R. 1935 Oudh 437); *Barisal Co-operative Bank v. Benoy Bhushan* (A. I. R. 1934 Cal. 537); *Ram Ranbijay v. Ram Giri* (A. I. R. 1935 Pat. 346); *Ram Prasad v. Emperor* (A. I. R. 1938 Pat. 403); *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278); *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Chattar Singh v. Makhan Singh* (A. I. R. 1936 Pesh. 20); *A. B. Neogi v. B. B. Neogi* (A. I. R. 1936 Rang. 105, 106); *H. Hagencister v. U. Po. Cho* (A. I. R. 1935 Rang. 53); *Mahomed Naim v. Mt. Muninnissa* (A. I. R. 1936 Oudh 32 F. B.); *Fateh Mahomed v. Emperor* (A. I. R. 1940 Sind 97); *Narayan Swami v. Emperor* (66 I. A. 66); *Corporation of Calcutta v. Kumar Arun Chandra* (A. I. R. 1934 Cal. 862); *Ram Lal v. Thakur Das* (A. I. R. 1938 Pat. 94); *Sardar Singh v. Relu* (A. I. R. 1944 Lah. 266, 273).

(2) This rule is so inflexible that even if absurdity or mischievousness,<sup>29</sup> hardship or injustice,<sup>30</sup> anomaly or defeat of the policy of the Legislature,<sup>31</sup> undesirability or even unreasonableness,<sup>32</sup> inequity,<sup>33</sup> conflict with the provisions of international law giving rise to a responsibility on the part of the Government of the country to foreign powers<sup>34</sup> is likely to result from giving effect to the provisions of the Act, the court is bound to do so, leaving it to the legislature to amend the Act as and when it thinks proper.

(3) When however there is any doubt or ambiguity in the language of the enactment the question of making a reference

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29. *Piara Singh v. Mula Mul* (A. I. R. 1923 Lah. 655).

30. *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Deputy Commissioner v. Budhu Ram* (A. I. R. 1937 Lah. 38); *Secretary of State v. Hajra* (I. L. R. 46 Cal. 199); *Divan Chand v. Manak Chand* (A. I. R. 1934 Lah. 809); *Jageshwar Singh v. Jawahar Singh* (I. L. R. 1 All. 311, 315 F. B.); *Abdul Aziz v. Uday Chand* (A. I. R. 1943 Cal. 358, 361); *H. V. Low Co. Ltd., v. Pashupati Nath* (A. I. R. 1945 Cal. 69, 70); *Mahomed Jamil v. Saudagar Singh* (A. I. R. 1945 Lah. 127, 129); *A. G. Albarta v. A. G. Canada* (A. I. R. 1943 P. C. 76, 83); *A. W. Meads v. Emp.* (A. I. R. 1945 F. C. 21, 23); *In re Firm of Thaverdas Kalumal* (A. I. R. 1941 Sind 1, 6); *Meghraj v. Alla Rakhia* (A. I. R. 1941 Lah. 177, 181); *Tukino v. Aotea, Dist. Maori, Land Board* (A. I. R. 1941 P. C. 109, 112); *Dusadh v. Emperor* (A. I. R. 1944 F. C. 1, 6); *Pohkar Singh v. Muliam Singh* (A. I. R. 1945 All. 136, 138); *Sarat Kumar v. Kiran Chandra* (A. I. R. 1944 Cal. 110, 111); *Jankiram and Co. v. Chunilal* (A. I. R. 1945 Bom 40, 42); *Pandurang v. Shamrao* (A. I. R. 1944 Bom. 272, 273). *Janardan v. Ganesh* (A. I. R. 1945 Bom. 200, 207).

31. *Joti Prasad v. Ambu Prasad* (A. I. R. 1933 All. 358); *Ram Prasad v. Emperor* (A. I. R. 1938 Pat. 403); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388. Sp. B.); *Narendra Nath v. Kamalbasini Devi* (I. L. R. 23 Cal. 563); *Chattar Singh v. Makhn Singh* (A. I. R. 1936 Pesh. 20); *A. B. Neogi v. B. B. Neogi* (A. I. R. 1936 Rang. 105, 106); *Dworka Mahaton v. Patna Municipality* (A. I. R. 1936 Pat. 282); *Biseshwar Baksh v. Bishwa Nath* (A. I. R. 1935 Oudh 489); *Hadayat Ullah v. Gulam Mahomed* (A. I. R. 1923 Lah. 529); *Emp. v. Benoarilal* (A. I. R. 1945 P. C. 48.)

32. *Emperor v. Hari* (A. I. R. 1935 Sind 145).

33. *Nannu Mal v. Ram Chander* (I. L. R. 53 All. 334); *Bhulan v. Bachcha* (A. I. R. 1931 All. 380); *Joy Chand v. Dole Gobinda Das* (A. I. R. 1944 Cal. 272, 280-81).

34. *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278, 333);

to other evidence of the intention of the legislature including the previous state of the law arises. There being two decisions of the Privy Council against the legitimacy of such a reference even in case of doubt or ambiguity except when it is alleged that the legislature intended to make substantial changes in the existing law,<sup>35</sup> the Bombay and Lahore High Courts and the Sind Judicial Commissioner's Court<sup>36</sup> had ruled against such a reference, the Madras and Patna High Courts had ruled in favour of it,<sup>37</sup> while there were conflicting decisions of the Calcutta and Allahabad High Courts and the Judicial Commissioner's Court at Nagpur.<sup>38</sup> This difference of view

35. *Administrator-General v. Prem Lal* (I. L. R. 22 Cal. 788 P. C.) on appeal from the same case reported in I. L. R. 21 Cal. 732; *Abdul Rahim v. Syed Abu Mahomed* (A. I. R. 1928 P. C. 16).

36. *Queen Empress v. Tilak* (I. L. R. 22 Bom. 112); *Gurdial Singh v. Central Board, Sri Durbar Saheb* (A. I. R. 1928 Lah. 337); *Khudabax v. Punjo* (A. I. R. 1930 Sind 265 F. B.); *Daily Gazette Press Ltd. v. Karachi Municipality* (A. I. R. 1930 Sind 287); *Murli Mul v. Benarsi Das and Sons* (A. I. R. 1935 Sind 62). Two later decisions of the Lahore High Court in *Sukh Dayal v. Firm, Govinda Mal* (A. I. R. 1944 Lah. 169, 170 F. B.) and *Bansi Ram v. Emperor* (A. I. R. 1944 Lah. 51, 53 F. B.) rule that this can be done but not so as to whittle down the protection, if any, given to a subject by a statute.

37. *Kandappa v. Vengamma* (I. L. R. 37 Mad. 548, 554 F. B.); *Dwarka Mahaton v. Patna Municipality* (A. I. R. 1936 Pat. 282, 284).

38.

*Calcutta High Court*

*For.*

*Prem Lal v. Radha Ballav* (A. I. R. 1931 Cal. 140); *King Emperor v. Barendra Kumar* (A. I. R. 1924 Cal. 257 F. B.); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.); *Administrator-General v. Prem Lal* (Suit—I. L. R. 21 Cal. 732).

*Against.*

*Queen Empress v. Sri Charan* (I. L. R. 22 Cal. 1017); *Debendra Narain v. Jogendra Narain* (I. L. R. 1936 Cal. 593).

*Allahabad High Court.*

*For.*

*Official Receiver of Muradabad v. Haji Murtuza Ali* (A. I. R. 1932 All. 434).

*Against.*

*Peare Lal v. Soney Lal* (A. I. R. 1936 All. 222).

*Nagpur J. C's. Court.*

*For.*

*Diwan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 61).

*Against.*

*Diwan Singh v. Emperor* (Suit—A. I. R. 1935 Nag. 90).



can now be deemed to have been set at rest by the recent decision of the Privy Council to the effect that such a reference is legitimate when the language of an enactment is not clear but admits of a doubt, and out of the possible constructions that would be adopted which would serve to avoid an inconsistency, or a hardship or manifest injustice not presumably intended, and which is in consonance with justice, equity and common sense.<sup>39</sup>

- (4) The view of a department of Government as to the interpretation of a particular enactment is not generally speaking admissible for the purpose of the interpretation of that enactment by a court. But when the legislature re-enacts the same provisions in another Act, it may not be improper to take notice of the fact that the new enactment is in precisely the same terms as the previous one.<sup>40</sup> The view of another High Court as to the provision of an All-India enactment must be given its due weight unless the court cannot conscientiously accept that view.<sup>41</sup>

(b) *Previous preliminary proceedings*:—Such proceedings would include the reports, if any, of the commission or committee appointed to investigate the causes of any particular evil and to suggest remedies for its removal, like those of the Royal Commission on Agriculture and the Indian Central and Provincial Banking Inquiry Committees, the terms of reference to whom included the subject of agricultural indebtedness, the Draft Bill which may have been the first step towards the adoption of the suggested remedy, the statement of objects and reasons which usually accompanies such a Bill, the speech

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39. *Secretary of State v. Mask and Co.* (A. I. R. 1940 P. C. 105, 109); *Venekateshwar v. Venkatesa* (A. I. R. 1941 Mad. 449, 460 F. B.); *United Provinces v. Atiga Begum* (1940 F. C. R. 110); *Kamala Ranjan v. Bepin Behari* (A. I. R. 1941 Cal. 540, 541); *Sohan Singh v. Jagir Singh* (A. I. R. 1942 Lah. 114, 117); *Rehman v. Surajmal* (A. I. R. 1945 Lah. 76, 78); *Lalit Kishore v. Ram Prasad* (A. I. R. 1943 All. 362, 365); *Zamurrad Hussain v. Ram Sarup* (A. I. R. 1943 All. 281, 282).

40. *Commissioner of Income Tax v. Laksmi Insurance Co.*, (A. I. R. 1941 Rang. 212, 219, S. B.).

41. *In re Sarupchand Hucamchand* (A. I. R. 1945 Bom. 255, 263).

of the Hon'ble Member of Government who may have moved its first reading and seen it through when it became an Act, the report, if any, of the Select Committee appointed to revise the Bill together with the revised Bill and the Minutes of the Debates that may have taken place on the several clauses thereof at the meetings of the Legislative Body or Bodies as the case may be. All of them are on the same footing because none of them forms part of the Act as may have been assented to by the Governor or Governor-General, whose assent is necessary according to the *Government of India Act, 1935*. When attention is drawn to any of them a question arises as to what value to attach to it while interpreting a part of the Act itself. This must be done on the strength of the course of judicial decisions on the point. What can be gathered on a perusal of a large number of them is that the Calcutta High Court had in two earlier cases<sup>42</sup> held that such proceedings can be referred to in order to gather the intention of the legislature in passing an enactment, that when the case reported in I. L. R. 21 Calcutta at p. 732 *et. seq.* went up to the Privy Council it held that reference to them for the said purpose could not legitimately be made<sup>43</sup> and that since then except in two cases<sup>44</sup> the learned Judges who had occasions to decide that point did not go against that ruling of the Privy Council.<sup>45</sup> It may there-

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42. *Empress v. Kartik Chunder* (I. L. R. 14 Cal. 721); *Administrator-General v. Prem Lal* (Suit—I. L. R. 21 Cal. 732).

43. *Administrator-General v. Prem Lal* (Appeal—I. L. R. 22 Cal. 788 P. C.).

44. Per Fawcett J. in *Hatimbhai v. Framroz* (A. I. R. 1927 Bom. 278, 300); *Ramireddi v. Sreeramulu* (A. I. R. 1933 Mad. 120).

45. See for instance the rulings in *Abdul Khan v. Shikara Bibi* (A. I. R. 1928 All. 124); *Chandi Charan v. Rohini Kumar* (A. I. R. 1934 Cal. 119); *Dina Nath v. Raja Sati Prasad* (A. I. R. 1923 Cal. 74); *Gurdial Singh v. Central Board, Sri Durbar Saheb* (A. I. R. 1928 Lah. 337) referring to *Rez v. West Riding of Yorkshire County Council* (1906) 2 K. B. 676, 716; *Rajmal v. Harnam Singh* (A. I. R. 1928 Lah. 35); *Shidramappa v. Neelavabai* (A. I. R. 1933 Bom. 272, 274); *Ashutosh Ganguli v. Watson* (I. L. R. 53 Cal. 929); *Krishna Ayyangar v. Nalla Perumal* (I. L. R. 43 Mad. 550, 559 P. C.) following 22 Cal. 788 P. C. and *Craies on Statutory Law*, 2nd edn., pp. 133-34; *In re Lala Harkisan Lal* (A. I. R. 1937 Lah. 497); *Superintendent and R. L. A., Bengal v. Tarak Nath* (A. I. R. 1935 Cal. 304, 305); *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593); *Corporation of Calcutta v. Monarch Bioscope Co.* (A. I. R. 1936 Cal. 145); *Dewarkhand Cement Co. Ltd. v. Secretary of State* (A. I. R. 1939 Bom. 215);

fore be taken to be a well-settled rule of the interpretation of Indian statutes that none of the proceedings above-mentioned can be looked upon as a legitimate aid in arriving at the conclusion as to the intention of the legislature in passing an enactment. Some of the English rulings on this point do however permit of an historical investigation being made in order to clear up an ambiguity.<sup>46</sup> The Calcutta High Court too has in one case held that judicial notice can be taken of historical facts while determining whether a statute is or is not *ultra vires*.<sup>47</sup>

(4) *English law*:—It not infrequently happens that an advocate for one of the parties, especially, if he is also a Bar-at-law, cites several decisions of the English Courts in support of his interpretation of a part of an Indian statute. In such cases the court is required to determine the legal value of such decisions or of the principles of common law enunciated therein and believed to have been embodied in the Indian statute. In order therefore that the court may be properly guided in discharging that duty it should have before it the principles on which the Judges of the Indian courts who had previous occasions to do so have based their rulings in such cases.

Now there are two classes of cases in which such a question is likely to arise namely:—

I. When the case falls within the orbit of a positive Indian enactment; and

II. When it does not fall within that of any such enactment.

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*Subrahmanya v. Sheikh Ghannu* (A. I. R. 1935 Mad. 628); *Ram Rambijay v. Ramgiri* (A. I. R. 1935 Pat. 346); *R. S. Ruikar v. Emperor* (A. I. R. 1935 Nag. 149); *Hiralal v. Parasramsao* (A. I. R. 1942 Nag. 5, 7); *In re 'New Sind'* (A. I. R. 1942 Sind 65, 69); *Qamar Jehan Begum v. Bansidhar* (A. I. R. 1942 Oudh 231, 238); *Administrator-General v. Prem Lal* (I. L. R. 22 Cal. 788 P. C.) *Midnapur Zamindari v. Kumara Chandra* (A. I. R. 1943 Cal. 544, 550) *Madho Singh v. James Skinner* A. I. R. 1942 Lah. 243, 252).

46. *Bank of England v. Vagliano Bros.* (1891) A. C. 107, 144; *Reg. v. Bishop of London* (1889) 24 Q. B. D. 213; *Reg. v. Most* (1881) 7 Q. B. D. 244.

47. *Benoari Lal v. Emperor* (A. I. R. 1943 Cal. 301, 313 S. B.).

The Judges have distinguished between these two classes of cases while giving their rulings in favour of or against making use of the English decisions or the common law principles on which they are based. They are therefore considered here separately.

I. (1) As regards the first class of cases it has been repeatedly and unequivocally ruled that when a case falls under a positive Indian enactment, reference to the rules of common law deduced from the decisions of English courts is neither necessary nor permissible because it is the duty of the Indian courts to administer the Indian statute law as it is and because they would not be acting within their authority in engrafting such rules on the Indian statutes, however wholesome they may be.<sup>48</sup> In one case the Privy Council has gone the length of ruling that it is dangerous to do so, and the High Court of Bombay remarked in one case that it was more likely to cause confusion than to render assistance.<sup>49</sup>

(2) This absolute prohibition was however held in one case to apply to those cases only in which there is no ambiguity in the words of the section of the Indian enactment to be construed and such rules were held to be useful in clearing up an ambiguity therein, if any, subject to the restriction that in such a case too the language of the section to be construed should not be strained in order to give effect to such rules.<sup>50</sup>

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48. *Indian General Navigation and Railway Co. Ltd. v. Dekhari Tea Co. Ltd.* (A. I. R. 1924 P. C. 40); *Wilkinson v. Wilkinson* (A. I. R. 1923 Bom. 321 F. B.); *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 S. B.); *Ganpat v. Sopana* (Iv. L. R. 52 Bom. 88, 93); *Jaisukhlal v. Mahomed Husen* (A. I. R. 1939 Bom. 522, 523); *Daily Gazette Press Ltd. v. Karachi Municipality* (A. I. R. 1930 Sind 287); *Emperor v. Joti Prasad* (A. I. R. 1932 All. 18, 22); *Sham Sunder v. Emperor* (A. I. R. 1932 Oudh 145); *Diwan Chand v. Manak Chand* (A. I. R. 1934 Lah. 809); *Hem Raj v. Krishna Lal* (A. I. R. 1928 Lah. 361); *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Emperor v. Ramanauja* (A. I. R. 1935 Mad. 528); *Abdul Rahman v. Emperor* (A. I. R. 1935 Cal. 316); *Jagadamba Pande v. Ram Khelawan* (A. I. R. 1942 All. 344, 347); *Satyanarayan Murti v. Papayya* (A. I. R. 1941 Mad. 713, 718).

49. *Lasa Din v. Gulab Kunwar* (59 I. A. 376, 385), A. I. R. 1932 P. C. 207); *Kekilabai v. Keshavlal* (A. I. R. 1942 Bom. 18).

50. *Dayal Singh v. Emperor* (A. I. R. 1936 Lah. 337).

(3) Where however it is found that there is an English Act embodying such a rule and that the provisions of that Act have been practically repeated in almost the same terms in the Indian Act, the relevant provisions in the former can, according to a ruling of the Sind Judicial Commissioner's Court, be referred to and if further they are found to have received a particular interpretation at the hands of any English Judges the Indian Legislature must be presumed to be aware of it and to have intended that it should be followed while construing the provisions in the Indian Act.<sup>51</sup> Almost the same principle is re-affirmed by the High Court of Lahore in a case before it.<sup>52</sup>

(4) The Court of the Judicial Commissioner at Peshawar has added a rider to this exception to the effect that even in such a case, the interpretation put by the English Courts on the words of the English statute found to have been incorporated in an Indian statute should not be followed if it is found to be contrary to the statute law of India as contained in any other enactment.<sup>53</sup>

II. Where however there is no provision of a positive Indian statute applicable to the facts of a case such as those of a civil action for damages for defamation the relevant rules of English common law deduced from the decisions of the English Courts must be applied to that case.<sup>54</sup>

*N. B.*—A ruling under an English statute law does not fall under any of the above categories. It having been based on the particular wording of an English statute is in no case a guide to the interpretation of a section of an Indian statute.<sup>55</sup>

#### *Definitions:—*

(1) The term "Award" is, according to this definition, to be understood in the sense of an award made by a Debt Adjustment Board duly appointed by the Provincial Government under S. 4 of the

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51. *Official Receiver v. Mt. Parameshwari* (A. I. R. 1932 Sind 50).

52. *Nizam Khan v. Hukam Chand* (A. I. R. 1941 Lahore 3 6, 320).

53. *Alliance Bank of Simla v. Mian Feroze Shah* (A. I. R. 1936 Pesh. 57).

54. *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.).

55. *Tarachand v. Emperor* (A. I. R. 1938 Sind 116).

Act as provided, in S. 24, which relates to the making of an award in terms of a private settlement arrived at by the parties after an application for adjustment has been made under S. 17, or in S. 54, which relates to an award on such an application after the whole procedure upto a scaling down of debts as provided in S. 52 has been gone through or in S. 55, which prescribes the mode of making an award when all the creditors of a debtor agree to a further scaling down of the debts to half the value of the property of the debtor in consideration of the local Primary Land Mortgage Bank or if there is none in the locality the Provincial Co-operative Land Mortgage Bank agreeing to issue to them bonds guaranteed by Government for the respective sums payable to them after the further scaling down is made as above-stated, or one made by the District Court having jurisdiction in the matter, on appeal from the award of such Board in cases in which an appeal lies to such Court under S. 9 of the Act. For the relevant Rule and Forms see Rule 29 and Forms Nos. 9 and 10 in the relevant Appendix.

S. 23 (4) having been so amended as to make the award to be made under it other than one made under S. 54 this definition should have been so amended as to include such an award in it. As it is, it cannot apply to such an award.

(2) The term "Board" wherever it occurs in the Act is to be understood in the sense of a Debt Adjustment Board duly established under the provisions of S. 4 of the Act and Rules 4 to 12.

(3) The term "Co-operative Society" wherever it occurs in the Act is to be understood to mean a society registered or deemed to have been registered under the provisions of the *Bombay Co-operative Societies Act, 1925*.

In S. 5 of that Act the societies which can be registered under it are described as follows :—

5. Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a Society, may be registered, under this Act, with or without limited liability :

Provided that unless the Provincial Government by general or special order otherwise directs—

- (1) the liability of a society of which a member is a society shall be limited;
- (2) the liability of a society of which the primary object is the creation of funds to be lent to its members, and of which the majority of the members are agriculturists and of which no member is a registered society shall be unlimited and the members of a such a society shall, on its liquidation, be jointly and severally liable for and in respect of all obligations of such a society;

Provided further that when the question whether the liability of a society is limited or unlimited has once been decided by the Registrar at the time of registration, his decision shall be final.

This definition is found adopted in S. 2 (2) of the *Bombay Tenancy Act, 1939* also.

(4) The word "Court" as used in S. 17 (Application for adjustment of debts), S. 61 (Transmission of award to the Court) and S. 63 (Recovery of amount due under an award) and also where it first occurs in S. 62 (1) (Registration of an award) means the District Court to which an appeal lies against the award of a Board under S. 9 of the Act, in S. 13 (Procedure in appeals), S. 14 (Finality of the Court's decision or order in appeal), S. 66 (Interim order for sale of debtor's property), S. 67 A (Authorisation by the Collector of a person interested in a debtor absent on duty in a Defence Service), S. 75 (Exclusion of period of proceeding before a Board or Court) and S. 83 (Rules to be made by the Provincial Government), a District Court or a Court of an Assistant Judge or First Class Subordinate Judge hearing an appeal under S. 9, and in the remaining provisions of the Act the civil court of competent jurisdiction.

Under S. 9 (1) of the Act, an appeal against an award lies to the District Court within whose jurisdiction the Board may have been established and under S. 9 (2) the District Judge has power to transfer for disposal any appeal to an Assistant Judge or to a First Class Subordinate Judge, now designated Civil Judge, Senior Division, subordinate to him who has been empowered under S. 17 or 27, as the case may be, of the *Bombay Civil Courts Act, 1869*.

(5) This is a special definition of the word "Debt" for the purpose of this Act. The dictionary meaning of the word is "anything that is owed or is due by one person to another" and hence "an obligation or liability," whatever its character and to whatever incidents it may be subject. Hence arrears of wages payable in respect of agricultural or manual labour" are included therein according to its usual connotation. But here those arrears are specially excluded from its connotation. Not so however the arrears of rent. Moreover from the use of the word "means" it is clear that the word is intended to include all secured and unsecured liabilities, whether in cash or kind, due from a person, whether they had arisen under a decree or order of a civil court or under an instrument such as a bond, promissory note, hundi, bill of exchange or handnote (Hathcittha), or in any other manner. Every liability in order to be included in a "Debt" must be of an ascertained sum. It must be due but not necessarily payable on the date of the application. Hence even the liabilities to be discharged on some future dates are included in the term "Debt." This becomes crystal-clear when the wording of its definition is construed in the light of that of S. 22 (1) (g) and (2) (b). The consequence of not declaring such a debt would be that it would under S. 32 (1) be deemed to have been discharged.

In support of this view of the intention of the legislature see also the proviso to S. 54 (2) (i) which directs that an order for the delivery of possession of a mortgaged property to a debtor shall not be withheld on the ground that the time for payment has not arrived or the debt has not been completely discharged or both events have not occurred.

(6) The definition of the word "Debtor" is also a special one. Its special features are:—(1) It applies both to an individual and to an undivided Hindu family who fulfil the conditions laid down for them in clauses (a) and (b). The following three conditions are common to both, namely:—(1) indebtedness, (2) holding of land used for agricultural purposes and (3) personal cultivation of such land from a date prior to 1st April 1937 in the case of the old Boards and for the two cultivating seasons immediately preceding the date of establishment of the Board concerned in other cases. In the case of a person



temporarily engaged in any of the Defence Services it is enough if he had been cultivating such land in the first of the said two seasons or the date of joining the service, whichever is earlier. What is "personal cultivation" can be gathered from S. 2 (13) read with its two explanations. What it is "to hold land" can be gathered from S. 2 (8). There is a 4th condition to be fulfilled in each case. In the case of an individual it is that he or she must be one having an income from sources other than agriculture and manual labour which does not exceed 20% of his or her total annual income or which does not exceed Rs. 300, whichever is greater. In the case of an undivided Hindu family the proportion between the non-agricultural and total incomes is the same but the maximum limit of the income from non-agricultural sources is Rs. 500. In the case of a person temporarily engaged in a Defence Service, the maximum limit is to be ascertained without reference to his salary.

*Illustration* :—If an agricultural debtor has a total income of Rs. 1,250 annually, he would be held to be a debtor not only if he has been earning Rs. 250 from non-agricultural sources, but also if he has been earning more than Rs. 250 from such sources, but in that case his such income should not exceed that limit by more than Rs. 50. An undivided Hindu family, even if there is only one earning member in it, has the additional advantage of being entitled to be held to be a debtor under this Act, even in case its income from such sources exceeds that limit by Rs. 250 more. This is the significance of the qualifying clause "whichever is greater" added at the end of condition (iv) in sub-sections 6 (a) and 6 (b).

*Explanation I.*—The word "Agriculture" occurs in condition (IV) under both the sub-clauses. So far as this Act is concerned it not only means the tilling of the soil but also means horticulture, i. e. the art of cultivating gardens, the raising of crops or garden produce with well, river or tank water, dairy farming i. e. the maintenance of a farm for keeping cows (and probably also buffaloes), growing grass for them, selling milk, curds, butter, cheese, etc., poultry-farming i. e. maintaining a farm for rearing domestic fowls for making use of them in one's home or for selling their chickens,

eggs, feathers, &c., stock-breeding *i. e.* keeping of animals of both sexes for the propagation of their species and rearing up their young ones for sale, &c., and grazing *i. e.* feeding cattle with grass while still in the ground. It does not however mean the mere leasing out of land for rent or for a share of the crops and the mere cutting of grass from a field or wood from individual trees or a forest. Cf. a very similar definition of the same word in S. 2 (1) of the *Bombay Tenancy Act, 1939*.

*Includes*:—It will be noticed that this explanation says that the term “Agriculture” for the purposes of this clause “includes” horticulture, &c. and “does not include” leasing of land, &c. It is not unusual to find a legislature making use of this verb in a definition. Its significance has however been giving rise to controversies as to the true meaning of the word or expression in the definition whereof it occurs. The following rulings with reference thereto would I hope, be found useful when such a controversy arises:—

*Inclusive definitions*:—The Madras High Court has ruled in *Madras Central Urban Bank Ltd. v. Corporation of Madras*<sup>56</sup> that when a legislature uses the term “includes” in a definition its intention must be either to settle a difference of opinion as to the meaning of the term sought to be defined or to bring in other matters not ordinarily connoted by that term.

Approving of that view the Patna High Court has ruled in *Bishwanath v. Official Receiver*<sup>57</sup> that it is implied in such a case that the term retains its ordinary meaning, whatever else it may mean.

The Bombay High Court also seems to have approved of the second view out of the two in the Madras ruling, in the case of *In re Strauss & Co., Ltd.*<sup>58</sup>, by saying that the word “include” in a

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56. A. I. R. 1932 Mad. 474, 481 in which the English case of *Dilworth v Commissioner of Stamps* (1899) A. C. 99 is referred to.

57. A. I. R. 1937 Pat. 185 F. B.

58. A. I. R. 1937 Bom. 15, 16. On this point see also the ruling of the Calcutta High Court in *Fateh Chand v. Akimuddin Chaudhari* (A. I. R. 1943 Cal. 108, 110), a case under the *Bengal Money-lenders Act*. (X of 1940).

definition-clause is to be understood to be enumerative and not exhaustive and that it has an extending force and does not limit the meaning of the term to the substance of the definition. It appears however to have estimated its value more correctly when it ruled in *Bapu Vithal v. Secretary of State*<sup>59</sup> that when we have an inclusive definition great care is required in applying it while interpreting the word wherever it occurs, that it is a recognised principle of judicial interpretation that the inclusive meaning is not to be necessarily and indiscriminately applied to the word wherever it occurs and that the comprehensive sense is "not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require that they should."<sup>60</sup>

*Scope of an explanation*:—The exact effect of an explanation added to a section is sometimes not easy to ascertain. The following case-law with reference thereto would in such a difficulty be found to be useful.

The Privy Council has stated in *Krishna Ayyangar v. Nalla Perumal*<sup>61</sup> that the construction of an explanation must depend upon its terms and that no theory of its purpose can be entertained unless it is inferred from the language used. This is a very sound principle to be adopted for guidance, for, if the natural construction of a particular explanation justifies the view that it does actually modify the scope of the section to which it is appended, whether it be by way of enlarging its scope or restricting it, effect must be given to it, whatever the theory established by the decisions of some of the High Courts may be. This brings us to the question of the value to be attached to such decisions while interpreting an Act.

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59. I. L. R. 56 Bom. 278, 289-90 relying on *Emperor v. B. H. DeSouza* (I. L. R. 35 Bom. 412).

60. *Emperor v. B. H. DeSouza* (I. L. R. 35 Bom. 412). For the other English decisions on the significance of this word see the rulings in *Queen v. Justices of Cambridgeshire* (1838) 7 Ad. and E. 480, 491; *Meux v. Jacobs* (1875) L. R. H. L. 481, 493; and *Mayor of Portsmouth v. Smith* (1885) 10 App. Cas. 364, 375.

61. I. L. R. 43 Mad. 550 P. C.

*Judicial decisions as an aid to interpretation* :—The Privy Council itself has ruled in another case<sup>62</sup> that though they “do effectively construe the words of an Act of Parliament and establish principles and rules whereby its scope and effect may be interpreted, there is always a danger that in the course of this process attention may be diverted from what has been enacted to what has been judicially said about the enactment and the scope of the statute may be unduly extended.” The Allahabad High Court too has put in a similar word of caution against giving an undue importance to such decisions in the case of *Mirza Zahid Beg v. Emperor*.<sup>63</sup> The Lahore High Court has however advanced the theory that an explanation to a section does not enlarge its scope but only makes it clear.<sup>64</sup> This may be true with regard to the particular explanation before that court but the sound view is that of the Privy Council above-mentioned.

*Explanation II* :—The above remarks as to the scope of an explanation must be made use of while determining the scope of this explanation because the expression “To cultivate personally” has been further defined in S. 2 (13) and that sub-section itself has two explanations. A reference to them makes it clear that Explanation II to this sub-section takes for granted that the fact required for holding whether an individual or an undivided Hindu family is or is not a debtor, namely that he, she or it must be cultivating personally, has been inquired into and that it has been found that the individual or family concerned has been cultivating personally. But in order that one can be placed in the class of “debtors” as defined in the present sub-section there is the further condition (iii) in both the clauses of this sub-section that the personal cultivation must have commenced from a date prior to 1st April 1937 in the case of the debtors coming before a Board originally established and for the two cultivating seasons immediately preceding the date of establishment of the Board concerned

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62. *Attorney-General of Canada v. Attorney-General of Ontario* (A. I. R. 1932 P. C. 36, 40).

63. A. I. R. 1938 All. 91.

64. *Kishan Singh v. Prem Singh* (A. I. R. 1937 Lah. 587, 589).

in the case of those coming before the Boards established after the passing of Bom. Act VIII of 1945 and must be continuing till the present date, *i. e. to say*, the date of the application under S. 17. Now it may happen that an individual or undivided Hindu family who had been personally cultivating a land used for agricultural purposes upto the relevant date, may have been dispossessed of the land for some reason or another after or even on that date, that for some time thereafter he, she or it may have ceased to cultivate any such land personally and yet at the date of the application he, she or it may be found to be cultivating personally some land either because he, she or it had in the meantime re-acquired the same land or acquired a different land. This explanation is intended to condone such breaks in the continuity of personal cultivation and provides that where such is the case the individual or undivided Hindu family must be deemed to be a "debtor" under this Act even though according to the strict construction of condition (iii) in either sub-clause this cannot be done. It will be seen that this proves the soundness of the rule of interpretation laid down in the Privy Council ruling in *Krishna Ayyangar v. Nalla Perumal*.<sup>65</sup>

(7) This sub-section defines the term "Financing of crops" which has been used at some places in the Act *e. g.* in S. 3 (iv). According to this definition it comprises cases of loans being advanced as well after the usual ploughing season as during it and those advanced for all the purposes connected with the raising of crops and the harvesting thereof, which include both the purchase of the necessary materials and the employment of labourers. The condition to be fulfilled in each case is that the loan must be re-payable during the next harvest season, which may differ according to the nature of the crops and the climatic conditions of each locality.

Besides the purposes specifically mentioned, this sub-section authorises the Provincial Government to prescribe other purposes and that Government has done so by Rule 3. All the other purposes mentioned therein should therefore be read as forming part of this sub-section.

(8) This sub-section defines the term "Holder" and the expression "To hold land" used in the subsequent chapters. This it does, not by attempting to define it independently of all previous legislation but by extending to this Act the definition of that term contained in S. 3 (11) of the *Bom. L. R. Code, 1879* and by further providing that for the purpose of this Act it shall be deemed to include persons who hold lands on the particular tenure mentioned therein and shall not be deemed to include those who hold lands of the particular class mentioned therein or lands whose owners are not individuals but particular classes of institutions. This kind of definition therefore serves a triple purpose, namely (1) that it extends the definition of the same term contained in S. 3 (11) of the *Bom. L. R. Code* to cases falling under this Act; (2) that it includes within that term that class of Watan lands in connection with which some service useful either to Government or the village community is being actually performed and (3) that it excludes from it the cases of (a) the holders of those lands which cannot be alienated without Government sanction such as Saranjams, Talukdari estates, &c., and (b) the holders of the lands belonging to religious or charitable institutions such as temples, mosques, churches, colleges or Pathshalas or Madresas, Gaushalas, hospitals &c. Apart from the specifically mentioned holders of service lands, inferior holders *i. e.* mere tenants of agricultural lands belonging to superior holders are included in the definition by the very extension of the definition contained in S. 3 (11) of the *Bom. L. R. Code* and by the fact of their not being specifically excluded.

This sub-section further provides that the expression "To hold land" shall be construed accordingly. Hence that term would mean "to hold land within the meaning of S. 3 (11) of the *Bom. L. R. Code, 1879*" and would include and exclude respectively the cases of the holding of the lands of the classes above-specified.

In S. 3 (11) of the *Bom. L. R. Code, 1879* the term "To hold land" or "To be a landholder or holder of land" has been stated to mean "to be lawfully in possession of land, whether such possession is actual or not". Hence for the purpose of this Act the terms "To be a holder," and "To hold land" would mean to be in lawful possession of

land, whether that possession is actual or constructive, subject to the limitations as to the inclusion and exclusion of the other cases above-specified.

For the significance of the terms "includes" and "does not include" occurring in this sub-section see the Commentary on S. 2 (6) Explanation 1.

(9) As illustrations of the definition of the term "Prescribed" see the Forms prescribed by and appended to the Rules made under S. 83 of the Act given in the relevant Appendix.

(10) The term "Resource Society" has been defined in S. 3 (h) (1) of the *Bombay Co-operative Societies Act, 1925* as "a society formed with the object of obtaining for its members the credit, goods or services required by them."

In the Bill ( XIII of 1939 ) as originally drafted it was a condition precedent for the adjustment of an agricultural debtor's debts that he should be a member of a "Resource Society" but the Assembly did not think it possible that as many resource societies would be founded by the time the Act was put into force as would be necessary for giving adequate relief to all the persons who deserved it. That condition was therefore deleted from S. 2 (6).<sup>66</sup>

(11) The Provincial Government has been empowered by S. 83 (1) of this Act to make rules generally for the purpose of giving effect to the provisions of the Act and by S. 83 (2) to make them with the particular object of providing for the matters referred to in clauses (a) to (o) thereof.

The Government of Bombay which put the Act into operation for the first time in some selected areas had accordingly made 40 Rules and prescribed 24 Forms and published them at pp. 685 to 727 of the B. G. G. Pt. IVB under R. D. Notification No. 3791/33 dated 21st August 1941.

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66. Vide the Speech of the Hon'ble Mr. Latthe who moved the first reading of the Bill in the Legislative Assembly, and also the speech of R. B. Chitale at pp. 2337-38 of the *Bombay Legislative Assembly Debates, 1939, Vol. V, Pt. II.*

(12) It is clear from this definition of a "Secured debt" that it would include not only debts secured by the mortgage of an immovable property but also those secured by the pledge of ornaments or other articles of value because the word "property" must be deemed to have been used in the sense of both movable as well as immovable property.

(13) This definition of the expression "To cultivate personally" is a special one framed for the purpose of this Act inasmuch as ordinarily "To cultivate personally" would not mean anything more than "to cultivate by one's own personal labour." This definition however embraces within its scope, besides cultivation by one's own labour, "cultivation by the labour of any member of one's family or by servants or by hired labourers under one's personal supervision and even the supervision of the member of one's family." It is thus clear that this expression has in this Act a very wide significance. The explanations make it still wider as explained below.

*Explanation I*:—This explanation contemplates the case of a person, who was cultivating land used for agricultural purposes personally in the sense conveyed by the provision in the main portion of this sub-section, dying before he could have an opportunity to take advantage of the provisions of this Act, on leaving behind him as his heir either a widow or a minor or a person suffering from some physical or mental disability who may not be cultivating a land personally according to the meaning given to the expression in the main portion of this sub-section but may be maintaining herself or himself on the produce of agricultural lands on getting them cultivated on her or his behalf by servants or hired labourers or by tenants. This explanation provides that such an heir of a deceased cultivator shall also be deemed "To cultivate personally" for the purpose of this Act. This applies to the case of an individual debtor only.

*Explanation II*:—This explanation contemplates the cases of two classes of undivided Hindu families, namely:—(1) in which there is at least one adult member of such family able to cultivate personally



and actually doing so and (2) in which there is no adult member at all capable of doing so and consequently whose lands are caused to be cultivated either by servants or by hired labourers or by tenants as in the case provided for by Explanation I. As to both of them this explanation says that they must for the purpose of this Act be deemed to cultivate personally. As already explained this sub-section together with its explanations is to be read along with sub-section (6) (a) and (b) and the Explanations appended thereto. Cf. a similar definition of the same expression contained in S. 2 (11) of the *Bombay Tenancy Act, 1939*.

(14) The definition of an "Unsecured debt" is a negative definition only. It is however capable of being construed positively by a reference to the definition of a "Secured debt" given in sub-section (12) *supra*. When that is done it is easily intelligible that what the legislature meant to convey by this negative definition is that any debt, which is not secured by an encumbrance on the whole or a portion of the property of the debtor, *i. e. to say*, any monetary obligation incurred by him without creating a burden for its repayment on any specific property of his, whether movable or immovable, irrespective of whether he has or has not passed a writing in any form with reference thereto, is an unsecured debt.

(15) This is the fourth case in which the provisions of another Act are extended to this Act, the previous ones being those of (1) sub-section (3) where the definition of a "Co-operative Society" as contained in the *Bombay Co-operative Societies Act, 1925* is extended to this Act; (2) sub-section (10) where the definition of a "Resource Society" contained in the same Act is extended to this Act and (3) sub-section (8) where the definition of the terms "Holder" and "To hold land" as contained in the *Bom. L. R. Code, 1879* are extended to this Act, although they being insufficient for the purposes of this Act have been modified by a further provision in the same sub-section. It is only when such an extension of a definition given in one enactment passed for one purpose is made, that use thereof can be made for the purpose of ascertaining the meaning of even the same word or expression contained in another Act. Otherwise all definitions given in an Act can be legitimately made use of for the purpose of construing any

portion of that Act only.<sup>67</sup> The observations made under the sub-heading *Other Acts not in pari materia* under the heading *Reference to Subject* in the earlier part of the Commentary on this section will also be found helpful in this connection.<sup>68</sup>

This sub-section purports to adopt the definitions of the terms "District Judge," "Joint Judge", "First Class Subordinate Judge" and "Special Jurisdiction" given in the *Bombay Civil Courts Act*, 1869. It is remarkable that there are no specific definitions of these terms in that Act. But there are certain provisions therein from which it can be gathered what they mean. Thus S. 5 of that Act provides that "There shall be in each district a District Court presided over by a Judge called the District Judge." From this we can gather that the term "District Judge" has been used therein to designate "the Judge presiding over the District Court established in each district." Similarly S. 12 of the said Act provides that "The Provincial Government may appoint in any district a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to him by an order of the High Court" From this we can gather that a "Joint Judge" "within the meaning of the said Act, "is a Judge whom the Provincial Government may appoint in any district and invest with powers as mentioned in the section". The significance of the term "First Class Subordinate Judge" has again to be gathered not from one section of that Act but from several sections, namely SS. 21, 22 and 24. Thereout S. 21 only provides that "there shall be such a number of Civil Courts in a district as may be required from time to time", S. 22 provides that "the Judges of such Courts shall be appointed" by the Provincial Government and "be called Subordinate Judges" and S. 24 provides *inter alia* that "the Subordinate Judges shall be of two classes" and that "the jurisdiction of a Subordinate Judge of the First Class extends to all original suits and proceedings of a civil nature." Taking the pro-

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67. *Mahabaleshwarappa v. Gopalaswami* (A. I. R. 1935 Mad. 673, 675).

68. See pp. 33-34 *supra*.

visions of these three sections together we can ascertain that under the *Bom. C. C. Act, 1869*, "a First Class Subordinate Judge is the Judge of a Civil Court in a district, who is not a Second Class Subordinate Judge and whose jurisdiction extends to all such original suits and proceedings of a civil nature as are not cognizable by any of the Second Class Subordinate Judges in the district." Lastly, the term, "Special jurisdiction" too has not been defined as such in the said Act but S. 25 of that Act provides that "a Subordinate Judge of the First Class shall, in addition to his ordinary jurisdiction, exercise a special jurisdiction in respect of such suits and proceedings of a civil nature as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class and wherein the subject-matter exceeds the pecuniary jurisdiction of the Subordinate Judge of the Second Class as defined by S. 24." Although the intention of the legislature in enacting this section is to state what additional jurisdiction the First Class Subordinate Judge shall exercise, the enactment is so clear that it can easily be gathered what the legislature meant by the term "Special jurisdiction" employed to designate, such additional jurisdiction.

(16) This is an additional sub-section in S. 2 of the Act which is of such a comprehensive nature as is likely to make up for any omissions to define words occurring in this section. The wording is however so general that the Boards and the Courts which will have to administer this Act will have to find out for themselves, from the *Civil Procedure Code, 1908* or the *Bombay Land Revenue Code, 1879* whether the words occurring in this Act, which have not been defined herein and whose meanings are doubtful, have or have not been defined in any of the two enactments mentioned.

*Construction of words not specifically defined in this section and not covered by sub-section (16):*—In spite of the above 15 sub-sections specifically defining certain words and expressions and the 16th extending the definitions contained in the *C. P. Code, 1908* and the *Bom. L. R. Code, 1879*, wherever they are found applicable, there must remain certain words of frequent occurrence in this enactment for determining the meaning whereof no assistance can be had from the

said sources. As to them the preliminary observations of a general nature made in the beginning of the Commentary on this section at pp. 30-42 *supra* will, I hope, be to some extent found useful. In addition to them the following result of a study of the judicial decisions with reference to the meanings to be assigned to some of them may also be found to be of some assistance.

*Technical and Non-technical words ; (a) Technical*:—Such words may be divided into two classes, technical and non-technical. As to when a word can be placed in the first class, the Allahabad High Court has ruled in *In re Jagmandar Das and others*<sup>69</sup> that the words used in a statute are to be understood in their ordinary *i. e.* non-technical or popular sense unless it is shown that they are used in a special or technical sense. Hence the burden of proving that a particular word of doubtful meaning in a statute has been used there in a technical sense will lie on the party who raises the contention that it has been so used. But there are Acts and Acts. Some of them are of a patently technical nature. As for the words used therein the Lahore High Court has ruled in the case of *Achhru Mul v. Balwant Singh*<sup>70</sup> that “it is to be assumed that the words and phrases of technical legislation are used in their technical sense if they have acquired any and otherwise in their ordinary sense.”

*(b) Non-technical*:—Some of the non-technical words occurring in this Act about whose judicial interpretation decisions are available are:—(1) “Proceeding”; (2) “Suits and proceedings”; (3) “May”; (4) “Other laws”; (5) “Includes”. I give them below for reference in case of necessity.

(1) A “Proceeding” has been defined in the judgment of the Lahore High Court in *Murad v. Lala Hansraj*<sup>71</sup> as “a matter which proceeds or is going on” and has accordingly been deemed to include an appeal if one is provided for by the statute in which it occurs.

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69. A. I. R. 1935 All. 378.

70. A. I. R. 1937 Lah. 178.

71. A. I. R. 1937 Lah. 680.

(2) As regards the expression "Suits and proceedings" the same court has ruled in *Kirpa Sing v. Ajaipal Singh*<sup>72</sup> that the expression has different meanings in different statutes and must therefore be construed with reference to the context in each case. Moreover the expression "suit and proceeding" occurring in S. 73 of this Act has been interpreted by the Bombay High Court in the case of *Pandurangrao v. Sheshadashacharya*.<sup>73</sup>

(3) As regards the use of the word "May" before a verb in a section or a portion of it, the same High Court has expressed the view in *Tulsi v. Omkar*<sup>74</sup> that in certain cases it is to be taken as conveying a mandate although ordinarily it denotes a recommendation or a permission to the court to do a thing if it thinks proper to do so in view of the circumstances of the case. One of those cases can be that in which a statute directs the doing of a particular thing for the sake of justice or the public good. In such a case before the Rangoon High Court, Otter J. held that the word "may" has the force of "shall".<sup>75</sup> In the same case Herald Ag. C. J. put the same proposition in a negative form when he ruled that "In enactments which confer powers and particularly in enactments which confer powers on public authorities the language of mere permission may not preclude the existence of a duty."<sup>76</sup> Conversely the Lahore High Court has held in *Gurdit Singh v. Committee of Management, Gurudwara*<sup>77</sup> that the use of the word "shall" does not necessarily mean that the provision in which it occurs is of an imperative nature.

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72. I. L. R. 10 Lah. 165.

73. 46 Bom. L. R. 711.

74. A. I. R. 1927 Bom. 299. The Calcutta High Court has ruled in *District Board, Khulna v. Jogesh Chandra* (A. I. R. 1943 Cal. 447, 449) that the word 'May' can have the sense of 'must.' For this ruling it relied on the English ruling in *Nichols v. Baker* (1890) 44 Ch. D. 262.

75. *Government of Burma v. Municipal Corporation of Rangoon* (A. I. R. 1930 Rang. 297, 306 F. B.) in which *Rez v. Barlow* (2 Salk. 649) and *Macdougall v. Paterson* (12 C. B. 755) were referred to.

76. Op. cit. p. 300.

77. A. I. R. 1941 Lah. 266, 267. See also *Mahomed Ikhtiyar v. Khana* (A. I. R. 1941 Lah. 310, 311).

(4) The terms "Other law" or "Other laws" occur very often in Indian enactments. Ordinarily it must mean "any law or laws other than that contained in the enactment under consideration." Still a question was raised in the case of *Bhim Raj v. Munia Sethani*<sup>78</sup> whether the term "other laws" did not refer to the Code itself in which it occurred and the court agreeably to the above view held that "it would be contrary to all the known canons of the construction of statutes that x ..x ..x ..x...x words referring to "other laws" should be taken to refer to the Code itself."

(5) For the rulings as to the interpretation of the verb "Includes" see the Commentary on Explanation I to S. 2 (6).

3. Save as otherwise expressly provided in this Act,  
Savings. nothing in sections 17, 31, 32, 33, 34, 38, 39,  
40, 41, 42, 43, 44, 45, 52, 53 and 55\* shall affect  
the debts and liabilities of a debtor falling under the  
following heads, namely :—

- (i) any revenue or tax payable to Government or any other sum due to it by way of loan or otherwise,
- (ii) any tax payable to a local authority or any other sum payable to such authority by way of loan or otherwise,
- (iii) any liability in respect of any sum due to any co-operative society,
- (iv) any liability in respect of any sum advanced after 1st January 1939 solely for the purpose of financing of crops ;

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78. A. I. R. 1935 Pat. 243.

\* The figure "55" was substituted for figure "54" by S. 3 (i) of Bom. Act VIII of 1945.

† *Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, Bom. VIII of 1945, 1945, this clause shall be construed as if for the figures, letters and word "1st January 1939" the words "the date of establishment of the Board concerned" were substituted.*

- (v) any liability under a decree or order for maintenance passed by a competent Court, and
- † (vi) any liability in respect of any sum due to any scheduled bank.

*Explanation :—*"Tax" means any toll, rate, cess, fee or other impost leviable by Government or any local authority.

## COMMENTARY

This section limits the applicability of the sections mentioned therein to the debts and liabilities of a debtor other than those specified in clauses (i) to (vi).

The topics dealt with in the said sections are as follows :—

- S. 17—Application for adjustment of debts.
- " 31—Service of notice to submit statement of debts.
- " 32—Voidness of claims relating to the debts in respect of which no application for adjustment or for recording a settlement has been made or if one was made was withdrawn or claims with respect to which a creditor had failed to comply with the requirements of S. 31.
- " 33—Duties of parties to attend, etc.
- " 34—Board's power to summon any person.
- " 35—Taking of Accounts.

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† This proviso was added by S. 3 (ii) of the said Act.

‡ This clause was added by S. 3 (iii) of the said Act.

- S. 39—Examination of creditor and debtor.
- „ 40—Board's duty to inquire into the history and merits of the case.
- „ 41—Board's power to dispense with the inquiry in certain cases.
- „ 42—Mode of taking accounts.
- „ 43—Board's power to make a presumption against a creditor who does not produce account-books.
- „ 44—Board's power to make up accounts on charging rent in lieu of profits in certain circumstances.
- „ 45—Board's power to declare a sale to be in the nature of a mortgage in certain circumstances.
- „ 52—Scaling down of debts.
- „ 53—Non-recoverability of the amount of debts in excess of those to which they are scaled down.
- „ 55—Award embodying a scheme framed by a Board in pursuance of the provisions of that section as modified by Bom. Act II of 1946.

Whatever the implication of the particular words used in those sections, they by virtue of this saving-clause are to be construed as not applicable to the debts and liabilities mentioned in the six clauses, (i) to (vi), of this section. But to this general proposition there is again the exception that if it is otherwise expressly provided in any of the sections of this Act, then the provisions of that section should be held applicable to the said debts and liabilities, notwithstanding this saving-clause.

The propriety of excluding the debts due to Government, local authorities and co-operative societies was much criticised in the Legislative Assembly when this saving-clause was put to the Assembly for being passed but the Finance Minister who piloted the Bill opposed the amendments that had been proposed by some non-official members in connection therewith and the clauses in this section as it originally stood were ultimately passed. The Minutes of the Debates relating to the discussion, though not useful for the purpose of interpretation may at least be found instructive. They will be found at pp. 1286-1308 of the



*Legislative Assembly Debates*, 1939, Vol. VII. To the said five one more in favour of scheduled banks has been added by clause (vi).

Clause (i) would include not only arrears of assessment whether payable for the current or any previous years but also those of land-improvement loans, loans advanced for irrigation purposes, &c.

Clause (ii) would, in the case of rural areas, extend to arrears of local-fund cess, Village-Panchayat cess, and sanitary cess, if any, due to Local Boards, and in the case of urban areas, to those of house-tax, sanitary cess, halalkhore cess, &c. due to Municipalities in connection with house-property in such areas, besides local fund cess, etc., due to Local Boards in connection with agricultural lands.

Clause (iii) is so worded that it would be immaterial what is the purpose for which the co-operative society, to which the debtor is indebted, was founded, what is the limit of its operation and whether its liability is limited or unlimited.

Clause (iv) relates to a special class of debts distinguished by the purpose for which they were incurred. The financing of crops as defined in S. 2 (7) is a legitimate purpose for which an agriculturist is required to incur short-term debts. The legislature had put down the definite date 1st January 1939 in this clause under an expectation that the Act would come into operation during the course of the financial year 1939-40. As a matter of fact it was put into operation even in a few selected areas from 1st January 1942 and this clause was not amended by the Amending Act of 1941. The result was that all the loans for the financing of crops taken from 1st January 1939 to 31st December 1941 remained exempt from the operation of the sections mentioned in S. 3.

This clause was amended by Bom. Act VIII of 1945 but only in its operation in the areas for which Boards were established after its passing. Its effect is that the creditors who may have advanced loans to the debtors applying for adjustment to such Boards will be entitled to claim the benefit of this clause only so far as the loans advanced after 21st April 1945 are concerned.

*Clause (v)* seems to contain a very salutary provision. It excludes from the operation of the sections mentioned, the liability of a debtor arising out of a decree or order of a civil or criminal court for the maintenance of any person, who must presumably be a widow or a minor or a disabled person or a deserted wife, whom the debtor was bound to maintain out of the income of the property in his hands. Such debts cannot justifiably be cut off under the provisions of the Act especially when a competent court has gone into the question of their legality.

*Clause (vi)*—This clause has been added by the Amending Act of 1945 with a view to extend the same privileged position to the scheduled banks having dealings with agriculturists, as the other creditors mentioned in the preceding clauses.

*Explanation* :—Whatever the ordinary, or dictionary or popular, meaning of the word “Tax” may be, for the purpose of this section it must, by virtue of this explanation, be interpreted to mean any toll, rate, cess, fee or other impost leviable by Government or by any local authority such as a Local Board or a Municipality or a Village Panchayat.

It should be particularly noted that SS. 23 to 25 relating to the necessity to get settlements recorded by competent Boards are not among the sections from whose operation the said debts and liabilities are exempted.

*General Rule of Construction of a Saving-Clause in a statute*—A saving-clause in a statute cannot be made use of to extend the scope of the prohibition contained in the main or enacting clause because it is possible that such a clause may have been added as a matter of abundant caution<sup>1</sup> Such exceptions must even generally be construed strictly.<sup>2</sup>

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1. *Province of Punjab v. Daulat Singh* (A. I. R. 1942 F. C. 38, 42 ).

2. *Madho Singh v. James Skinner* ( A. I. R. 1942 Lah. 243, 248 ).

## CHAPTER II

### CONSTITUTION AND POWERS OF A DEBT ADJUSTMENT BOARD AND THE POWERS OF THE COURT IN APPEAL.

4. (1) The Provincial Government may, by notification in the *Official Gazette*, establish a Debt Adjustment Board. Such Board may be established for any local area or for any class of debtors in any local area.

(2) A notification under sub-section (1) shall also be published in the local area concerned in the regional language of that area and in such other manner as may be prescribed.

(3) (i) The Board shall consist of—

(a) one person who holds or has held office under the Crown in India, or *\*who has been practising as a legal practitioner for such period as may be prescribed or*

(b) a body or association of persons, or

(c) persons not less than three and not more than five in number.

(ii) Where the Board consists of more than one person, one of such persons shall be a chairman and another a vice-chairman.

(iii) Persons constituting a Board shall have such qualifications as may be prescribed and shall be appointed by the Provincial Government.

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\*The words in italics in this sub-clause were added by S. 4 of Bom. Act VIII of 1945.

(4) Where the Board consists of five members the quorum shall be three, and where the Board consists of four or three members, the quorum shall be two.

(5) Where the chairman and other members of the Board are unable to come to a unanimous agreement, the opinion of the majority shall prevail. Where the Board is equally divided, the chairman shall have a casting vote.

(6) During the absence of the chairman from any meeting of the Board the vice-chairman shall act as chairman. During the absence of both the chairman and vice-chairman from any meeting of the Board, any member elected by the members present shall act as chairman. The First Class Subordinate Judge, within the local limits of whose special jurisdiction the Board is established, shall also nominate one of the members of the Board to act as chairman in the absence of both the chairman and the vice-chairman and on the failure of the members to elect a chairman. The vice-chairman or the member who is so elected or nominated as chairman shall, while so acting, have the same powers as the chairman.

(7) When the Board consists of only one officer or individual, the Provincial Government may appoint, in the manner prescribed, such number of assessors not exceeding four as it thinks fit, to assist the Board in any proceeding before it under this Act. In making the award the Board shall take into consideration the opinions of such assessors.

(8) No member of the Board who has directly or indirectly, by himself or his partner, any share or interest in any transaction in any proceedings before the Board shall act as a member of the Board in respect of such proceedings.

*Heading of the Chapter*:—As worded, this heading conveys the idea that this chapter contains all that the Act was intended to enact in the matters of the Constitution and Powers of a Debt Adjustment Board and of the Powers of the Court in Appeal. As a matter of fact it is so only with respect to the constitution of the D. A. Boards and their powers of such a general nature as would be useful in all the proceedings before them and those of the Courts in appeal and certain incidental matters concerning appeals.

The sections comprised therein can be grouped together in view of their contents as follows:—

- SS. 4-5 Appointment and Removal of the Board and any of its members when more than one.
- „ 6-7 Powers of the Board and Procedure before it.
- S. 8 Judicial nature of the proceedings before it.
- SS. 9-14 Appeals from the awards and decisions of the Board and incidental matters.
- S. 15 Administrative control over the Board.
- „ 16 Board's power to enlarge time.

As for the use that can be legitimately made of the headings of chapters or groups of sections while interpreting the sections under them see the case-law discussed under the heading *Heading of a Chapter as an aid to interpretation* in the Commentary on S. 1 *supra*.

A reference to the Subject-Index appended at the end will show what specific powers the Boards and the Courts have under this Act with respect to the numerous questions which are likely to crop up in the course of the exercise of the jurisdiction conferred on them by it.

*Scope of the section and its marginal note*:—This section is sub-divided into 8 parts or sub-sections, each of which deals with a separate topic connected with the constitution of the D. A. Boards, which is the subject-matter of the section as a whole according to the marginal note "Constitution of the Board". This note is comprehensive

enough. As for the case-law on the point of *Marginal note as an aid the interpretation* of the sections to which there are appended see the Commentary on S. 1 under that heading.

*Sub-section (1):*—This sub-section confers on the Provincial Government power to establish D. A. Boards as well for any class of debtors in any local areas as for any local areas as a whole. Such classes would, for instance, be the Bhils of the Panch Mahals and West Khandedh Districts, the weavers of the Kheda district, etc.

Owing to the use of the permissive expression “may establish” used in this sub-section, it would naturally be supposed that the Provincial Government may as well not use the discretion to appoint such Boards vested in it by this sub-section. But it must be borne in mind that this is a discretionary power conferred on it “for the public good” within the meaning of the ruling of Otter J. in the case of the *Government of Burma v. Municipal Corporation of Rangoon*<sup>1</sup> and that therefore the word *may* here has the force of *shall*. Herald Ag. C. J. who presided over the Full Bench which decided the said case has put the same view in the negative form thus:—“In enactments which confer powers on public authorities, the language of mere permission may not preclude the existence of a duty”<sup>2</sup> and supported it by the ruling in the *Bishop of Oxford's case*.<sup>3</sup> The purport of the ruling of the Bombay High Court in *Tulsi v. Omkar*<sup>4</sup> is also the same as the dictum of Otter J. above-mentioned since it is to the effect that in certain cases the word *may* is to be taken as mandatory. It must therefore be understood that the legislature has cast a duty on the Provincial Government to establish D. A. Boards for local areas or for any class of debtors in any local areas and that it has left it to its discretion to select the local areas and classes of debtors in any local areas which it may consider suitable for the establishment of such Boards. But even there once it decides to make the appointment of such a Board it must follow the procedure laid down in this sub-section which is that the

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1. A. I. R. 1930 Rang. 297, 306, F. B.

2. Op. Cit. p. 300.

3. 5 A. C. 214.

4. A. I. R. 1927 Bom. 299.

appointment should be made by a notification published in the *Official Gazette*, which is the *Bombay Government Gazette*, and that laid down in sub-section (2), which is explained below.

*Sub-section (2)* :—This sub-section further requires that such a notification should be published in the regional language of the local area concerned *i. e.* in the language generally spoken by the inhabitants of that area and in such other manner as may be “prescribed” which means “prescribed by rules” as the word is defined in S. 2 (9). The ruling-making power is conferred by S. 83.

*Sub-section (3)* :—This section lays down in clause (i) in how many alternate ways a D. A. Board can be constituted. They consist of the appointment of :—

- (1) one person only who is or has ever been a Government servant or who has been practising as a legal practitioner for such period as may be fixed by a rule made in this behalf;
- (2) a body or association of persons;
- (3) not less than three and not more than five persons.

It further provides in clause (ii) that in the third case one of the members shall be a chairman and another a vice-chairman.

Clause (iii) provides that the Provincial Government shall have the power to establish the Boards and that in the matter of the selection of the persons necessary for their establishment it shall be guided by the rules defining the qualifications deemed to be necessary, framed by itself.

The Rules framed by Government of Bombay on this point will be found in the relevant Appendix.

*Sub-section (4)* :—This sub-section provides for the contingency that where there are three to five members of a Board, all of them may not be present at every sitting thereof. In order that the Board's work may not be impeded thereby, it provides that when it consists of five members the quorum, *i. e.* the minimum number of members

required for proceeding with its work, shall be three and that when it consists of four or three members, that number shall be two.

This sub-section cannot apply to the Boards constituted as provided for in S. 4 (3) (i) (a) and (b), because in the case of a body or association of persons selected to constitute a Board it cannot be said that the Board constituted of any of them consists of five, four or three "members" which means individual members.

*Sub-section (5):*—This sub-section provides for the contingency in which there are three or more than three but not more than five individual members of a Board and all of them cannot agree on any point arising for decision before them. The provision is that if in such a case the majority of views is on one side, the decision of the Board shall be given on that side and that when the members are equally divided, as might happen when there are four members, the chairman shall have a casting vote, obviously in addition to his usual vote and the decision of the Board shall be given on that side on which he prefers to give his additional vote.

*Sub-section (6):*—This sub-section contemplates the possibility of the chairman of a Board being absent from any of its meetings and provides that (1) if the chairman is absent but the vice-chairman is present, he shall exercise the powers of the chairman; (2) if both are absent, the members present shall themselves elect one of themselves as the chairman for the meeting and he shall exercise those powers; (3) if both are absent and the members present fail to elect a chairman from amongst themselves, the F. C. Subordinate Judge, within the local limits of whose special jurisdiction the Board may have been established, is authorised to nominate one of the members as the chairman and that member would then exercise those powers. In view of the transfer of control over the Boards to the District Judges by the amended S. 15 this sub-section should have been amended but it is not.

From the facts that the F. C. Subordinate Judge of the district would be at its headquarters and that most of the Boards would be established in rural areas, it appears that when the third contingency arises, his nomination would not reach the members present at a meeting



in sufficient time to enable them to continue that meeting after his nomination reaches them. Therefore if the chairman and vice-chairman are absent from any one meeting and the members present cannot agree amongst themselves as to the election of any of them as the chairman for the meeting they would be well-advised to agree to adjourn the meeting to a date on which the chairman or the vice-chairman can attend it rather than make a report to the F.C. Subordinate Judge and ask him to nominate a chairman or to ask the parties to go and move him for that purpose, unless the period of absence is likely to be a long one.

*Sub-section (7)*:—This sub-section contains a very revolutionary provision so far as the method of civil administration in this Province is concerned. The Judges of the High Court and those of the Sessions Courts in some districts try certain criminal cases with the help of jurors appointed under the *Criminal Procedure Code, 1898*. The Judges of the Sessions Courts in the same districts try other criminal cases and those in the others try all with the help of assessors appointed under the same Code. No Judge at any place in the Province engaged in the exercise of civil jurisdiction is ever required to try a case with the help of jurors or assessors. S. 4 (3) (a) provides that a single individual, who has been holding or has held an office under the Crown in India or who may have been a legal practitioner of some, say 5 to 10, years' standing may be appointed to exercise exclusively the powers of a Board and this sub-section provides that when the Board consists of only one officer or individual "the Provincial Government may appoint in the manner prescribed such number of assessors, not exceeding four, as it thinks fit, to assist the Board in any proceeding before it under this Act and that in making the award (therein) the Board shall take into consideration the opinions of such assessors. The language of the sub-section is apparently of a permissive character and therefore the Provincial Government may or may not take advantage of the power thus conferred. There is however room for the application of the dictum of Otter J. in the case of the *Government of Burma v. Municipal Corporation of Rangoon*<sup>5</sup> that the word *may*

has, in some cases, the force of *shall*. It is of course a mere matter of opinion. Whatever construction may be put upon it there is a further limitation in this sub-section that the appointment of assessors may be made for assisting a Board, not in all cases but in some specified case or cases coming before it. It must also be noted that the Provincial Government is left free to fix upon the number of assessors to be appointed for any particular case or cases subject to a maximum of four. It should lastly be noted that the Provincial Government constituted under S. 93 of the *Government of India Act, 1935* did not appoint any assessors for assisting the Boards appointed in 1942 and 1945. It is to be seen whether the Congress Government now in office appoints any when it extends the Act to the Province as a whole, which it is its declared policy to do.

*Powers of the One-man Board* :—Although such a Board may be given assessors to assist it in the disposal of any particular cases, it is not necessary for it to take their opinions even in such cases while passing any other order except that relating to the making of an award. That in other cases it would have the power to make even an award without consulting anybody, goes therefore without saying.

*Sub-section (8)* :—This sub-section introduces a partial disqualification of the members of a Board in connection with certain proceedings before it. It would come into operation if in any of such proceedings there is involved a transaction between the parties to them in which a member of the Board has a share or interest, whether directly or indirectly, either by himself or by his partner in business. The kind of disqualification which such a share or interest would bring about is that the member concerned cannot act as a member of the Board in respect of such proceedings.

*Period of appointment of the Board* :—This section does not mention the period for which the appointment of the Board is to be made. Therefore unless the order of appointment contains any definite period for its duration, it must be deemed to be perpetual subject to the provisions of S. 5 (1). The case of a resignation is quite different. If a Government official duly qualified is appointed to discharge the

functions of a Board he cannot obviously resign the appointment without the previous permission of the Provincial Government but non-officials would be free to resign their appointments at any time. Their appointments would therefore terminate from the date of acceptance of their resignations.

5. (1) Notwithstanding anything contained in section 4, the Provincial Government may, after due enquiry at any time, by notification in the *Official Gazette*—

Removal of Board  
or member.

- (a) dissolve any Board and establish in its place a fresh Board ; or
- (b) remove all or any of the members of a Board and appoint in their place new members.

(2) The dissolution of a Board or the occurrence of any vacancy on the Board through death, resignation or removal of its members under sub-section (1) shall not in any way affect the validity of any proceedings pending before the Board and the said proceedings shall be continued before the said Board or before any other Board established in place of the said Board, as the case may be, as if there has been no dissolution of the Board or the occurrence of any such vacancy.

(3) Save as otherwise provided in this Act, the proceedings pending before any Board which has been dissolved under sub-section (1) and in place of which no other Board has been established shall be deemed to be civil proceedings within the meaning of section 14 of the *Indian Limitation Act, 1908*, and the provisions of the said section shall, so far as may be, apply to the computation of the period of limitation in regard to any suit or applica-

tion which may be instituted in any civil court to enforce any claim which was the subject-matter of the proceedings pending before the Board so dissolved.

### COMMENTARY

*Scope of the section* :—Although the marginal note to this section says that it relates to the “Removal of Board or member” the contents of the section show that that is the subject-matter of sub-section (1) of the section only and that the other two sub-sections thereof provide for the situation arising not only out of the operation of sub-section (1) but also out of natural causes, or an action on the part of any of the members. The said note is not therefore sufficiently comprehensive. As for the legitimate use that can be made of a marginal note or a side-note see the Commentary at pp. 17-20 *supra*.

*Sub-section (1)* :—This sub-section empowers the Provincial Government (1) to dissolve a Board and establish a new one in its place and (b) to remove all or any of the members of a Board and appoint new ones in their place.

The manner prescribed by this sub-section for such dissolution or removal is by way of a notification published in the *Official Gazette*.

This sub-section further provides that before the Government takes such a serious step it must make a due inquiry. What is meant by a due inquiry is not stated anywhere and therefore that will have to be determined by the Government when a case for an inquiry under this sub-section arises. It can however be presumed that the enquiry would be made according to the principles of natural justice, *i. e. to say*, a definite charge would have to be framed and communicated to the person concerned, it would have to be proved before a quasi-judicial tribunal specially appointed for that purpose, the defence of the person concerned would have to be ascertained and he would have to be given an opportunity to cross-examine the witnesses examined in support of that charge and to examine his own witnesses, if any, in rebuttal of the charge, before it is decided to take action under this sub-section. It is also not stated in the said sub-section what acts of commission or omission on the part of a Board or any of its members would be

considered sufficient to justify the holding or an enquiry under the Act. There is also no rule on that point amongst the Rules framed so far under S. 83.

*Sub-section (2):*—This sub-section ensures continuity being maintained in the proceedings before a Board against which or against any of whose members action is taken under sub-section (1) or before changes in whose constitution take place by reason of the death or resignation of any of its members. It provides that in spite of such changes taking place in its constitution the validity of the proceedings so far held before the Board shall remain unaffected and that the re-constituted Board shall be entitled to continue such proceedings further as if no such disturbing factors had come into being.

*Sub-section (3):*—In the case of the above nature so far as it concerns a whole Board it might happen that the Provincial Government may decide not to appoint another Board in place of the dissolved one. If it so decides it would be a question for consideration what are going to be the consequences of such decision on the rights of the parties. The legislature has assumed that in such a case the proceedings before the Board would come to an end and the parties whose rights are affected by such an event would resort to the ordinary civil courts for their enforcement. When they do so a question would arise as to whether the period occupied in the proceedings before the Board should or should not be excluded while computing the periods of limitation prescribed by the *Indian Limitation Act, 1908* for the enforcement of such rights. In order to clear that doubt this sub-section provides that the proceedings before the Board which may have been dissolved and in place of which no fresh one may have been established “shall be deemed to be civil proceedings within the meaning of S. 14 of the said Act.” This provision too would not by itself suffice because the words in sub-sections (1) and (3) of that section are:—“..... the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal .....” and for holding a Board to be “a Court of first instance” there is no other section in this Act. On the contrary consideration of the wording of numerous sections such as SS.

tion which may be instituted in any civil court to enforce any claim which was the subject-matter of the proceedings pending before the Board so dissolved.

### COMMENTARY

*Scope of the section* :—Although the marginal note to this section says that it relates to the “Removal of Board or member” the contents of the section show that that is the subject-matter of sub-section (1) of the section only and that the other two sub-sections thereof provide for the situation arising not only out of the operation of sub-section (1) but also out of natural causes, or an action on the part of any of the members. The said note is not therefore sufficiently comprehensive. As for the legitimate use that can be made of a marginal note or a side-note see the Commentary at pp. 17–20 *supra*.

*Sub-section (1)* :—This sub-section empowers the Provincial Government (1) to dissolve a Board and establish a new one in its place and (b) to remove all or any of the members of a Board and appoint new ones in their place.

The manner prescribed by this sub-section for such dissolution or removal is by way of a notification published in the *Official Gazette*.

This sub-section further provides that before the Government takes such a serious step it must make a due inquiry. What is meant by a due inquiry is not stated anywhere and therefore that will have to be determined by the Government when a case for an inquiry under this sub-section arises. It can however be presumed that the enquiry would be made according to the principles of natural justice, *i. e. to say*, a definite charge would have to be framed and communicated to the person concerned, it would have to be proved before a quasi-judicial tribunal specially appointed for that purpose, the defence of the person concerned would have to be ascertained and he would have to be given an opportunity to cross-examine the witnesses examined in support of that charge and to examine his own witnesses, if any, in rebuttal of the charge, before it is decided to take action under this sub-section. It is also not stated in the said sub-section what acts of commission or omission on the part of a Board or any of its members would be

considered sufficient to justify the holding of an enquiry under it. There is also no rule on that point amongst the Rules framed so far under S. 83.

*Sub-section (2):*—This sub-section ensures continuity being maintained in the proceedings before a Board against which or against any of whose members action is taken under sub-section (1) or before changes in whose constitution take place by reason of the death or resignation of any of its members. It provides that in spite of such changes taking place in its constitution the validity of the proceedings so far held before the Board shall remain unaffected and that the re-constituted Board shall be entitled to continue such proceedings further as if no such disturbing factors had come into being.

*Sub-section (3):*—In the case of the above nature so far as it concerns a whole Board it might happen that the Provincial Government may decide not to appoint another Board in place of the dissolved one. If it so decides it would be a question for consideration what are going to be the consequences of such decision on the rights of the parties. The legislature has assumed that in such a case the proceedings before the Board would come to an end and the parties whose rights are affected by such an event would resort to the ordinary civil courts for their enforcement. When they do so a question would arise as to whether the period occupied in the proceedings before the Board should or should not be excluded while computing the periods of limitation prescribed by the *Indian Limitation Act, 1908* for the enforcement of such rights. In order to clear that doubt this sub-section provides that the proceedings before the Board which may have been dissolved and in place of which no fresh one may have been established “shall be deemed to be civil proceedings within the meaning of S. 14 of the said Act.” This provision too would not by itself suffice because the words in sub-sections (1) and (3) of that section are:—“..... the plaintiff has been prosecuting with due diligence another civil proceeding whether in a Court of first instance or in a Court of appeal .....” and for holding a Board to be “a Court of first instance” there is no other section in this Act. On the contrary a consideration of the wording of numerous sections such as SS. 2 (2)



and (4), 9, 15, 37, 58, 61, 62, 66, 68 (1) and (2), 69, 73, 75 and 76 leaves no doubt as to a Board under this Act being intended to be treated as a special tribunal and not an ordinary Civil Court. S. 74 of this Act too is not likely to be serviceable for that purpose because it is so worded as to be made use of in the case of proceedings before a Board whereas we are here considering a case arising out of the abolition of a Board. Moreover it is doubtful whether in a case like that, a Board, assuming it to be "a Court," can be deemed to have been "unable from defect of jurisdiction or other cause of a like nature" to entertain a suit or application. This sub-section therefore further provides specifically that the provisions of S. 14 of the *Indian Limitation Act, 1908*,<sup>1</sup> shall, so far as may be, apply to the computation of the period of limitation in regard to any suit or application which may be instituted in any civil court to enforce a claim which was the subject-matter of a proceeding before a Board which has been dissolved. This provision shows the anxiety on the part of the legislature to prevent any injury occurring to the rights already acquired by persons residing in an area in which for some reason or another the new machinery set up by this Act fails.

6. (1) Subject to the provisions of this Act, the Board shall have full power to decide all questions, whether of title or priority or of any nature whatsoever, and whether involving matters of law or fact, which may arise in any case within the

Power of Board to decide all questions arising on adjustment of debts.

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1. The relevant portions of the said section are as follows:—

"14 (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court, which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

Sub-section (2) of that section which is intended to apply to the case of an applicant is also similarly worded except that the word "application" is substituted for the word "suit," the word "applicant" for the word "plaintiff" and so on.



cognizance of the Board or which the Board may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete adjustment of debts in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes on all the parties and all other persons claiming through or under such persons who are parties to the proceedings in which such decision is given.

### COMMENTARY

*Scope of the section*:—This section is intended to empower the Boards appointed under this Act to decide and decide finally all questions, whether of substantive or adjective law or of fact, that arise in the course of the proceedings before them or which they in the exercise of their discretion deem it expedient or necessary to decide in order to do complete justice or to make a complete adjustment of debts in any such proceedings. It has been sub-divided into two sub-sections.

*Sub-section (1)*:—Sub-section (1) thereof gives such power to the Boards in the widest possible terms so as to cover all questions of law or fact which may arise in the course of the proceedings before them, and all, whether so arising or not, which they in their discretion consider it expedient or necessary for them to decide, keeping in view the fact that it is their duty to do complete justice to the parties before them and to make a complete adjustment of the debts of the debtors within their jurisdiction, unhampered by petty quibblings. This power is however "subject to the provisions of this Act." Hence if the provisions of any other section or a part of a section of this Act expressly prohibits the decision of any particular questions by them or which confer the power of deciding particular questions on a Judge of a civil court, the Boards cannot decide them even though they may be arising in any proceedings before them.

While exercising this wide discretionary power the Board should bear in mind that it is an established rule of law that a discretionary power given by a statute must be exercised in strict conformity with private rights<sup>1</sup> and that the courts would be entitled to see that the discretion vested in them is exercised in a proper manner.<sup>2</sup>

It should also be borne in mind that there is a distinction between a discretion and a duty and that therefore whereas it would be absolutely necessary to do an act, to do which the law has cast a duty, it is optional whether to do a discretionary act or not. This is the gist of the ruling of the Privy Council in *Maqbul Ahmad v. Omkar Pratap*.<sup>3</sup> According to it when an act gives a statutory discretion, there can be implied in the court, even outside the limits of the Act, a general discretion to dispense with its provisions. When the question therefore is one of law or usage having the force of law and is not of a simple nature the Board would be well-advised to make a reference under S. 58 to the Court having jurisdiction to decide the question.

*Sub-section (2)*:—This sub-section gives a finality to the decisions of the Boards on the questions referred to in sub-section (1) and further provides that they shall be binding on the parties to the proceedings in which the questions may have arisen and on all other persons claiming through or under them for all purposes, *i. e. to say*, if the same questions were to arise in the same or another proceeding before the same Board, or in another proceeding before any other Board or in the course of a suit or proceeding before any ordinary court, the decisions of the Board on those questions would operate as *res judicata* within the meaning of S. 11 of the *Civil Procedure Code, 1908*. This finality and this binding character of their decisions, though given “notwithstanding anything contained in any other law for the time being in force”, are nevertheless “subject to the provisions of this Act”. Hence if there is a conflict between the provisions of this sub-section and those of any other section or part

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1. *A. B. Moola v. Commissioner for the Port of Rangoon* (A. I. R. 1931 Rang. 95).

2. *Des Raj v. Emperor* (A. I. R. 1930 Lah. 781, 786).

3. A. I. R. 1935 P. C. 85, 88.

of this Act, the latter must prevail over the former. Thus for instance S. 9 (1) provides that an appeal shall lie under certain decisions of the Board. As against that it cannot be argued that this sub-section has declared the decisions of the Board to be final but the said specific provision should be construed as an exception to the general rule laid down in this sub-section, as was ruled, for instance, in the cases of *Mahomed Sabuddin v. Emperor* and *Sripad v. Tuljamanrao*.<sup>4</sup>

*Ejusdem generis* rule and its application :—This sub-section only gives effect to the well-established rule of interpretation known as the *ejusdem generis* rule, which though originally an English common law rule based on the dictum of Romilly M. R. in *Pretty v. Solly*<sup>5</sup>, has been admitted by the Indian High Courts as binding on the Indian courts also.<sup>6</sup> As regards the application and significance of this rule Sir John Beaumont, the late learned Chief Justice of Bombay, made some remarkable observations in his judgment in *Commissioner of Income-tax v. Laxmidas*.<sup>7</sup> His Lordship said :—“The so-called *ejusdem generis* rule, which, I cannot help thinking, is sometimes misapplied, is merely a rule of construction. When you have general words following particular words the general words are limited to things which are *ejusdem generis* with the particular words. But that rule being one of construction should never be invoked when its application appears to defeat the general intent of the instrument to be construed.” It has been similarly decided by the Madras High Court in the case of *Kallingal Moosa v. Secretary of State*<sup>8</sup> that if the intention of the legislature is clear from the words of the statute

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4. A. I. R. 1935 Cal. 281; A. I. R. 1938 Bom. 372. See also *Ram Dayal v. Shes Dayal* (A. I. R. 1939 Nag. 186).

5. (1859) 26 Beav. 606, 611.

6. *Sikandar Khan v. Buland Khan* (A. I. R. 1926 Lah. 435); *Mulji Tribhawan v. Dakor Municipality* (A. I. R. 1922 Bom. 247); *Bhana Makan v. Emperor* (A. I. R. 1936 Bom. 245, 257).

7. A. I. R. 1938 Bom. 41. See also *Maxwell's Interpretation of Statutes*, 7th edn., pp. 288-89; *Venkatasubba v. Manager, L. F. Chatram* (A. I. R. 1942 Mad. 462-63). As for the application of the rule to a case arising under the *Bengal Money-lenders Act* (X of 1940) see *Gour Chand v. Pradyumna Kumar* (A. I. R. 1945 Cal. 6. 17).

8. I. L. R. 43 Mad. 65.

an occasion for the application of the said rule does not arise. Though the case there contemplated was that of a general provision following a particular one, the rule would be applicable even if the reverse is the case. Similarly it would be applicable as well to the provisions of the above nature in a statute as to those in an instrument, testamentary or non-testamentary, because it is a general rule of construction.<sup>9</sup> It is again as much applicable to the associated words in a sentence as to terms and phrases appearing in parts of the same section or in different sections of the same chapter of a statute.<sup>10</sup> It is also applicable when two such provisions occur in two different statutes <sup>11</sup>

7. (1) Subject to the provisions of this Act and  
 Procedure before Board. any rules, the Board shall have the same  
 V of 1908. powers as are vested in civil courts under  
 the *Code of Civil Procedure, 1908*, when  
 trying a suit and in particular in respect  
 of the following matters :—

- (a) joining any necessary or proper parties ;
- (b) summoning and enforcing the attendance of any person and examining him on oath ;
- (c) compelling the production of documents ;
- (d) issuing commissions for the examination of witnesses ; and
- (e) proof of facts by affidavits.

(2) Subject to the provisions of this Act and any rules, the Board may direct any of its members to inspect any site or to examine any witnesses on commission. On the inspection of such site by the members and examination of witnesses on commission, a report shall be made to the Board.

9. *Wharton's Law Lexicon* pp. 362.

10. *Bharat National Bank v. Bhagwan Singh* (A. I. R. 1943 Lah. 140, 143).  
*Municipal Corporation of Rangoon v. Saw Willie* (A. I. R. 1942 Rang. 70, 72).

11. *Official Liquidators v. Narain Deomal* (A. I. R. 1943 Sind 89, 90).

## COMMENTARY

*Scope of the section* :—By this section the legislature invests the Board generally with the powers of a civil court under the *Civil Procedure Code, 1908* when trying a suit, particularly specifies some of them and empowers it to direct one of its members to inspect any site or to examine a witness on commission.

*Sub-section (1)* :—This sub-section extends to the proceedings before the Board the provisions in the *Civil Procedure Code, 1908* with respect to the powers of the civil courts when trying a suit generally in respect of all the necessary acts, and particularly those with respect to the acts mentioned in clauses (a) to (e) thereof, subject however, in each case, to the provisions of this Act and any rules that may be framed by the Provincial Government in connection therewith.

This is another case of a general provision having been made in the Act subject to any particular ones that may exist in other parts thereof. The provisions in the Code specifically referred to in this sub-section are those contained in the following portions thereof, namely :—

- (a) Joinder of Parties—Schedule I, Order I.
- (b) (i) Summoning and attendance of witnesses—Schedule I, Order XVI. These are to be applied subject to the rules made with reference to this subject for which see the relevant Appendix.
- (b) (ii) Examination of witnesses on oath—Schedule I, Order XVIII.
- (c) Compelling the production of documents—Schedule I, Order XIII.
- (d) Issuing of commissions for the examination of witnesses—Schedule I, Order XXVI, Rules 1 to 8.
- (e) Proof of acts by affidavits—Schedule I, Order XIX.

*Sub-section (2):*—This sub-section authorises the Board to issue a commission to any of its own members (when it consists of more than one) to inspect any site or examine any witnesses on commission under Rules 1 to 8, or 9 and 10 of Order XXVI in Schedule I to the *C. P. Code*, which have been made applicable by sub-section (1) of this section, although a court is not supposed to issue a commission to itself. This power too is however to be exercised subject to the provisions of this Act and any rules which may be framed with respect thereto. In this connection it should be noted that a member of a Board having directly or indirectly a share or interest in any transaction under investigation in any proceeding before the Board, whether by himself or by his partner, is disqualified by S. 4 (8) from acting as a member of the Board during the course of such proceeding.

This sub-section further provides that the member authorised as above to inspect a site or examine a witness on commission shall make a report of the work done by him pursuant to the authority given to him by the Board.

8. All proceedings under this Act before the Board shall be deemed to be judicial proceedings for the purposes of sections 193 and 228 of the *Indian Penal Code*. XLV of 1860.

Proceedings  
deemed to be judi-  
cial proceedings.

## COMMENTARY

*Scope of the section:*—This section by enacting that all the proceedings before the Board under this Act shall be deemed to be judicial proceedings for the purpose of SS. 193 and 228 of the *Indian Penal Code, 1860*, confers upon the Board the dignity and solemnity of a judicial tribunal, which the nature of the functions which it has to perform require. S. 193 of the said Code provides in its first part for the punishment of any person who “intentionally gives false evidence in any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of a judicial

proceeding." The maximum punishment prescribed for any of those offences is "imprisonment of either description for a term which may extend to seven years" and also fine.

We are not concerned with the second part of the said section nor with Explanations 1 and 2 out of the three Explanations thereto.

Explanation 3 to that section includes within the meaning of the term "judicial proceeding," "an investigation directed by a Court of Justice according to law" and "conducted under the authority of a Court of Justice," ..... "though that investigation may not take place before a Court of Justice." There is an illustration also below that explanation. It is:—"A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a state of a 'judicial proceeding' A has given false evidence." According to this explanation read in the light of the illustration below it, an inquiry made on the spot by a member of a Board appointed under S. 7 (2) of this Act to inspect a site or examine a witness on commission in connection with a proceeding before it, would be a "judicial proceeding" and any person making, during the course of such an enquiry, a false statement on oath or solemn affirmation, knowing it to be false, would be guilty of the offence of perjury punishable under the above section.

The term "Judge" has been defined in S. 19 of the *I. P. Code*. So has the term "Court of Justice" in S. 20 thereof. A "judicial proceeding" has been nowhere defined in the Code but according to Dr. Gour "it must mean a proceeding before a judge having jurisdiction in the matter."<sup>1</sup>

Section 228 of the said Code provides for the punishment of any person "who intentionally offers any insult or causes any interruption to a public servant while such public servant is sitting in any stage of a judicial proceeding." The maximum punishment prescribed for

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1, *Penal Law of India* Vol. I, Para. 2055 at pp. 679-80.



this offence is simple imprisonment for six months or a fine of Rs. 1,000 or both.

It would be well to draw the attention of those concerned to the prudent remarks of Dr. Gour with reference to the use to be made of this power. He says<sup>2</sup>:—"It is pointed out that the courts should not be unduly sensitive about their dignity and convict persons for contempt cases in which the insult offered to the court is not intentional *e. g.* where the accused let fall a coarse expression and was afterwards contrite or when the offence is technical or of a slight and trivial nature and is not calculated to prejudice the fair trial. When the court elects to take action it is necessary that it should record the stage of judicial proceeding interrupted and the evidence that it was intentional. An omission in this respect is not curable under S. 537 of the *Criminal Procedure Code*."

*Rules for the construction of penal enactments*:—It would also be helpful and conducive to justice and fair play for those concerned to know some of the general rules for the interpretation of all penal enactments, which have by this time been fairly established by judicial decisions. They are:—

- (1) All penal enactments, whether contained in laws specially enacted for the purpose of the suppression of crimes or in sections of a penal nature in any special piece of legislation should, as a rule, be very strictly construed *i. e.* against the Crown and in favour of the subject.<sup>3</sup>
- (2) All law which puts a restraint of any sort on human activity and enterprise must be construed in a reasonable and generous spirit.<sup>4</sup>

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2. Op. cit. para 2523 at pp. 796-97.

3. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74 F. B.); *Sitaram v. Sukhraj Singh* (A. I. R. 1936 Oudh. 180); *Nathmal v. Brahmपुरi Committee* (A. I. R. 1935 Nag. 242); *Hasan Khan v. Ahmed Khan* (A. I. R. 1935 Pesh. 30); *Emperor v. Kadarbhai* (A. I. R. 1927 Bom. 483); *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28); *Girjaprasad v. Emperor* (A. I. R. 1935 All. 346).

4. *Kartar Singh v. Ladha Singh* (A. I. R. 1934 Lah. 777); *Netai Chandra v. Emperor* (A. I. R. 1936 Cal. 529).



- (3) No court of criminal justice should dispense with the statutory requirements of the law as constituting the proof necessary to establish a guilt<sup>5</sup> and the benefit of a doubt must always be given to the accused.<sup>6</sup>
- (4) The law as a whole is always subject to evasion in the sense that there is no obligation not to do a thing which it has not prohibited. It is not evading an Act to keep outside it.<sup>7</sup>

The last proposition may seem startling, especially to laymen. It is nevertheless true. Although an act may be morally culpable, the law would not take cognizance of it and punish its doer unless it comes within its own four corners. That does not however mean that the law would wink at any breach thereof and therefore the proposition that follows is also equally true.

- (5) Every law is intended to be obeyed and must therefore have a sanction behind it. It must therefore be so construed as to defeat all attempts to evade it directly or indirectly and it must be understood to extend to all such circumstances.<sup>8</sup>

This means that an act would be punishable not only if it comes within the express wording of an enactment but also if it comes within it by necessary implication.

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5. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74 F. B.); *Bank of Chettinad v. Commissioner of Income-tax, Madras* (A. I. R. 1940 P. C. 183); *King v. Aung Nyam* (A. I. R. 1940 Rang. 259); *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28); *Emperor v. Chatrabhuj* (A. I. R. 1936 Pat. 350); *Divan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62); *Benoari Lal v. Emperor* (A. I. R. 1943 Cal. 285, 318); *Abdul Razak v. Kuldeep Narain* (A. I. R. 1944 Pat. 147, 161—62); *Manager, Court of Wards v. Moolchand* (A. I. R. 1941 Nag. 36, 53, 64), a case under the *C. P. Debt Conciliation Act* (II of 1933); *Purushottam Devji v. Emperor* (A. I. R. 1944 Bom. 247, 248); *High Court Bar Association, Lahore v. Emperor* (A. I. R. 1941 Lah. 301, 303); *In re "New Sind"* (A. I. R. 1942 Sind 65, 70).

6. *Gauri Dayal v. Emperor* (A. I. R. 1935 All. 121); *In re Khairati Ram* (A. I. R. 1931 Lah. 476); *Parmanand v. Emperor* (A. I. R. 1939 Lah. 81); *Ganpatrao v. Emperor* (A. I. R. 1932 Nag. 174).

7. *Divan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62).

8. *Mahomed Bagar v. Mahomed Kasim* (A. I. R. 1932 Nag. 210),

- (6) In construing a section of a penal Act which casts upon the accused the burden of proving innocence, the court must act strictly.<sup>9</sup> The same is the rule with respect to a penal provision in an Act.<sup>10</sup>
- (7) The courts must generally in cases of doubt lean against any construction of the penal law which is patently oppressive to the subject and in favour of that which is in accord with the general policy of the criminal law.<sup>11</sup>

9.\*(1) *Every award except on award made in terms of a settlement under sub-section (4) of section 23 or under section 24 or under section 55 and every decision of the Board under sub-section (3) of section 23 or dismissing an application under sub-section (2) of section 35 shall, at the instance of any party, be subject to appeal to the District Court within the local limits of whose jurisdiction the Board may have been established.*

9. *Emperor v. Nathulal* (A. I. R. 1939 Bom. 339, 340).

10. *In re United Motor Finance Co.* (A. I. R. 1935 Mad. 325).

11. *A. M. Rangachariar v. Venkataswami* (A. I. R. 1935 Mad. 56); *Guranditta v. Emperor* (A. I. R. 1938 Lah. 691).

\* The whole of this section was substituted by S. 5 of the Bom. Act VIII of 1945 for the original S. 9 which stood thus :—

9. (1) *Every award except an award made in terms of a settlement under sub-section (4) of section 23 or under section 24 or under section 55 shall, at the instance of any party, be subject to appeal—*

- (a) *to the District Court within the limits of whose jurisdiction the Board may have been established, if the total amount of debts payable by the debtor under the award exceeds Rs. 5,000, and*
- (b) *to the Court of the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board may have been established, if the total amount of such debts does not exceed Rs. 5,000.*

(2) *Every decision of the Board under sub-section (3) of section 23 or dismissing an application under sub-section (2) of section 35 shall at the instance of any party be subject to appeal to the Court of the Subordinate Judge of the First Class within the local limits of whose special jurisdiction the Board may have been established.*

(2) *The District Judge may transfer any such appeal to any Assistant Judge subordinate to him who has been empowered to hear appeals under section 17 of the XIV of 1869. Bombay Civil Courts Act, 1869 or to a Subordinate Judge of the First Class in the district who has been invested with power to hear appeals under section XIV of 1869. 27 of the Bombay Civil Courts Act, 1869.*

## COMMENTARY

*Scope of the section:—*As stated at the commencement of the Commentary on S. 4, this and the following 5 sections provide for the making of appeals under this Act and incidental matters. Thereout this section confers upon the aggrieved party a right to file an appeal in the District Court against certain awards and decisions of the Board.

It has been sub-divided into two sub-sections. The first of them lays down a general rule conferring a right of appeal against all awards except those made under certain specified provisions and against the specified decisions of the Boards and the second confers on the District Judges a power to transfer any appeals filed in their courts to any Assistant Judges or First Class Subordinate Judges, now called Civil Judges, Senior Division, subordinate to them, who may have been empowered to hear appeals under the relevant provisions of the *Bombay Civil Courts Act, 1869*.

*Sub-section (1):—*The particular awards that have been excluded from the operation of this section are those made in terms of a settlement under (1) S. 23 (4), (2) S. 24 and (3) S. 55. In each of those cases except one the award that is made is preceded by an agreement as to the terms thereof between the parties concerned. That case is that of an award made under S. 55 (1) as amended by Bom. Act II of 1946 in cases in which the total amount of liability of the debtor as found under the provisions of the Act is equal to or less than 50% of the value of his immovable property as ascertained under S. 50 of this Act, and the rule made thereunder. Whenever such amount exceeds 50%

that value, an award is made under S. 55 (1) and (2), only if the creditors concerned agree to a further scaling down of the debts to an amount equal to 50% of such value.

All other awards, whether made after or without an inquiry into the history of the transactions, after or without reducing the principal and interest or any of them, and after or without the scaling down of debts, are appealable and any point can be taken in such an appeal provided it can be brought within the four corners of the provisions of S. 12 *infra*.

*Change in the law:*—All these appeals can now be entertained only by the District Courts within the local limits of whose jurisdiction the Boards making the awards may have been respectively established. Under the section as it originally stood, the awards not falling in the above category were, for the purpose of appeals, divided into two classes, namely (1) those under which the amounts found due did not exceed Rs. 5,000 and (2) those under which such amounts exceeded Rs. 5,000. Appeals against the former lay to the Courts of the First Class Subordinate Judges within the local limits of whose special jurisdiction the Boards making the awards had been established and those against the latter to the Courts of the District Judges within the local limits of whose jurisdiction the Boards had been established. The same sub-section also conferred a right to appeal against the decision of a Board made under S. 23 (3) and an order of dismissal made by it under S. 35 (2). In the case of both the classes of decisions an appeal originally lay to the First Class Subordinate Judge within the local limits of whose special jurisdiction the Board had been established. Now however, such appeals also lie, under this sub-section, to the District Court within the local limits of whose jurisdiction the Board making the decisions may have been established.

*Sub-section (2):*—This sub-section as now worded deals with quite a new matter. It is the conferment on the District Judges of the power to transfer any of the appeals filed in their courts to any Assistant Judges or First Class Subordinate Judges, subordinate to them, who may have been duly empowered under S. 17 or 27 of the *Bombay Civil*

*Courts Act, 1869*, as the case may be, to hear appeals. Thus the latter classes of Judges, can, on transfer, hear appeals and dispose of them, though they cannot allow any to be filed in their courts.

It should be noted here that according to S. 40 (2) of *Bom. Act VIII of 1945* the First Class Subordinate Judges must dispose of the appeals pending in their courts at the date of coming into force of the said Act, *i. e.* on 21st April 1945.

It should further be noted that this section confers on any party a right to appeal only against certain awards and certain decisions made by a Board and that therefore the decisions of a Board other than those mentioned in sub-section (1) thereof are final by virtue of the provisions of S. 6 (2), which must therefore be read along with this sub-section.

*Nature of the right of appeal* :—A right of appeal has been held by the Allahabad High Court<sup>1</sup> and the Lahore High Court<sup>2</sup> to be a vested right of action created by a statute. It has also been called a remedial right by the Madras High Court<sup>3</sup>. Certain rules of the construction of statutes conferring such a right have been settled by other judicial decisions. It would be helpful to those who have to deal with this Act to know them, if as often happens, this statute is subsequently amended or repealed. I therefore give them below.

*Statutes affecting vested rights*:—(1) There is a presumption that every statute is generally prospective, *i. e.* to say, that it is to be read as speaking on the date on which it is to be applied, unless there are clear words showing a contrary intention either expressly or by necessary implication.<sup>4</sup>

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1. *Alley Rasul Ali v. Balkishen* (A. I. R. 1934 All. 709); *Het Ram v. Collector of Aligarh* (A. I. R. 1941 All. 355).

2. *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [(A. I. R. 1934 Lah. 1013 (2)]; *Mahomed Jamil v. Saudagar Singh* (A. I. R. 1945 Lah. 127, 129).

3. *Ramakrishna v. Subbaraya* (A. I. R. 38 Mad. 101).

4. *Parashram v. Emperor* (A. I. R. 1931 Lah. 145) in which the English decisions in *Midland Railway v. Pye* (10 C. B. N. S. 179) and *Attorney-General*

(2) The laws of procedure are an exception to this general rule.<sup>5</sup>

(3) Statutes affecting vested rights must be construed strictly so as not to interfere with such rights unless it is clear from the express words of the statute or it is necessarily implied by them that the legislature intended to affect them<sup>6</sup>.

(4) Such statutes are either interpretative or directory, *i. e. to say*, those made with the intention of settling doubtful claims, or declaratory or imperative, *i. e. to say*, those which declare certain rights for the first time. Those of the first variety are not generally retrospective in their operation<sup>7</sup> while those of the second variety are.<sup>8</sup> Thus Acts which change the legal capacity or status of a party and fall in the latter class generally operate to extinguish, diminish or vary the extent to which a party can claim the aid or protection of the court.<sup>9</sup> But a right of action or appeal is a remedial right and is

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*v. Sillem* (1884) 2 H and C 431 are referred to; *Shakuntala Devi v. Karsalya Devi* (A. I. R. 1936 Lah. 124); *Musamat Lahari v. Bala* (I. L. R. 1922 Nag. 227) *.. Nepra v. Sayar Pramanik* (I. L. R. 55 Cal. 67); *Gulam Daud Khan v. Habibulla Khan* (A. I. R. 1936 Pesh. 125); *Suryamal v. Sri Ram* (A. I. R. 1939 Pat. 158, 160); *Hayatuddin v. Musamat Rahiman* (A. I. R. 1935 Sind 73, 75); *Tika Sao v. Hari Lal* (A. I. R. 1940 Pat. 385 F. B.).

5. *Sidhu Ram v. Nur Mohammad* (A. I. R. 1937 Lah. 506); *L. Liag Ram v. Har Prasad* (A. I. R. 1934 All. 253); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013 (2)]; *Dhirendra Nath v. Ijjatali Mian* (A. I. R. 1940 Cal. 423); *Arunachellam v. Valliappa* (A. I. R. 1938 Rang. 130 F. B.)

6. *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299); *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18); *Vishwanath v. Harihar* (A. I. R. 1939 Pat. 90); *Gangaram v. Punamchand* (I. L. R. 21 Bom. 822); *Bepin Chandra v. Mahim Chandra* (A. I. R. 1940 Cal. 345); *Chudaman Singh v. Kamta Nath* (A. I. R. 1939 Nag. 230).

7. *Ram Saran v. Balkisan* (A. I. R. 1940 Nag. 303); *Gurdit Singh v. Committee of Management, Gurudwara* (A. I. R. 1940 Lah. 266).

8. *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 593); *Martand v. Narayan* (A. I. R. 1939 Bom. 305, 307 F. B.); *Girdharilal Son and Co. v. K. Gowder* (A. I. R. 1938 Mad. 688, 700).

9. *Padgayya v. Baji Babaji* (I. L. R. 11 Bom. 469).

not as such affected by legislation made after its exercise.<sup>10</sup> Consequently unless such legislation expressly affects pending suits and appeals they must be decided according to the law in force at the time of their institution.<sup>11</sup>

(5) Rights acquired under judgments, like those acquired under statutes are to be deemed to have been intended to be kept inviolate<sup>12</sup> but if there are words in a statute pointing to an intention of the legislature to alter existing rights an appeal court is bound to take notice of it and give effect to it even though it may have been passed after the decree of the trial court.<sup>13</sup>

(6) Amending statutes are, as a rule, not to be given retrospective effect unless expressly provided otherwise therein.<sup>14</sup> The same is the rule with respect to repealing statutes.<sup>15</sup>

(7) No greater effect should be given to an intention of the legislature to give retrospective effect to a statutory provision affecting a vested right than is absolutely necessary according to the clear expression or necessary implication of the statutory provision.<sup>16</sup>

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10. *Musamat Rupi v. Sadasheo* (A. I. R. 1925 Nag. 190); *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013 (2)]; *Ranchhoddas v. Ranchhoddas* (I. L. R. 1 Bom. 581); *Asikunnissa Bibi v. Dwijendra Krishna* (A. I. R. 1931 Cal. 32); *King Emperor v. Indu Bhushan* (A. I. R. 1926 Cal. 819); *Alley Rasul Ali v. Balkishen* (A. I. R. 1934 Lah. 709); *Zamindara Bank v. Suba* (A. I. R. 1924 Lah. 418); *Penniselvam v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83); *Haider Hussein v. Puran Mul* (A. I. R. 1935 All. 706 F. B.).

11. *Gujrat Trading Co. Ltd. v. Trikamji Velji* (3 Bom. H. C. R., O. C. J. 45); *Prabhakar v. Khanderao* (10 Bom. L. R. 625).

12. *Laxmanrao v. Balkrishna* (I. L. R. 36 Bom. 617).

13. *Shantiniketan Co-operative Housing Society Ltd. v. Madhavlal* (A. I. R. 1936 Bom. 37, 41).

14. *Sukal Lakhpat Ram v. Raghu Koeri* (A. I. R. 1928 Pat. 109).

15. *Chaudhary Gursaran Das v. Parmeshwari Charan* (A. I. R. 1927 Pat. 203); *Makar Ali v. Sarafuddin* (A. I. R. 1923 Cal. 85); *Chengayya v. Kottayya* (A. I. R. 1933 Mad. 57); *Kanak Kanti Roy v. Kripa Nath* (A. I. R. 1931 Cal. 321); *Shiya Janaki v. Kirtanand* (A. I. R. 1936 Pat. 173); *Penniselvam v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83).

16. *Secretary of State v. Bank of India Ltd.* (A. I. R. 1938 P. C. 191).



10. An appeal against a decision or award of the Board shall be filed within 60 days from the date of such decision or award :  
Limitation for appeals.

Provided that in computing the period of limitation the provisions of the *Indian Limitation Act, 1908*, applicable to appeals shall, so far as may be, apply to appeals under this Act. IX of 1908.

### COMMENTARY

*Scope of the section* :—This section prescribes a special period of sixty days for filing an appeal as provided for in S. 9. Hence an appeal against an award or a decision under sub-section (1) of that section thereof must be filed within sixty days from the date of the award or decision appealed from.

But there remains the question of the computation of that period because certain unavoidable delays occur at times in doing an act, which is to be done within a prescribed period *e. g.* the delay due to obtaining a copy of the award or decision to be appealed from. Such delays are lawfully excusable and hence the legislature should have by this section or another section of the Act provided for the method of computation of the said period when delays occur on account of certain specified causes. Instead of doing so it has added to this section a proviso which extends to appeals under S. 9 of this Act the provisions contained in the *Indian Limitation Act, 1908* with regard to the computation of the periods of limitation for the purpose of appeals and provides further that they shall be made use of so far as they can be made applicable. These provisions are contained in Part III of that Act comprising SS. 12 to 25 thereof.

*Rules as to the interpretation of the statutes of limitation* :—Those provisions are so extensive that it is not convenient to copy them out here and comment upon them. However I think it necessary to state the following rules as to the interpretation of such provisions deduced from decided cases.



(1) The statutes of limitation are, according to rulings of the Bombay and Nagpur High Courts<sup>1</sup>, intended to check the tendency towards dilatoriness and must therefore be strictly construed. Being in derogation of common rights they cannot be extended to cases not clearly covered by them; in other words they should be so construed as to advance rather than bar the remedy.<sup>2</sup>

(2) When any special statutes lay down any special periods for the exercise of rights conferred by them they must be strictly followed.<sup>3</sup> They cannot be construed on equitable principles,<sup>4</sup> considerations of convenience being out of place when the language is clear.<sup>5</sup>

3. When there is a ground for excluding certain periods under S. 14 of the *Indian Limitation Act, 1908*, in order to ascertain what is the date of expiration of the prescribed period, the days to be excluded have to be added to what is primarily the prescribed period.<sup>6</sup>

Although this section and the proviso thereto have been construed together in the only way which is reasonable in view of their wording it is not always easy to assess the effect of a proviso on the section to which it has been added. The following general rules on that point are therefore given in the hope that they will be helpful in arriving at a correct decision in such a doubtful case.

*Proviso as an aid to interpretation*:—(1) It is a well-settled canon of construction that a proviso shall not be construed so as to enlarge the scope of the enactment when it can fairly and properly be so construed as not to have that effect.<sup>7</sup>

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1. *Ramchandra v. Lazman* (I. L. R. 31 Bom. 162); *Nandu v. Bhuvanoo* (A. I. R. 1929 Nag. 74); *Parashram v. Rakhma* (I. L. R. 15 Bom. 229, 305).

2. *Balkrishna v. Baijnath* (A. I. R. 1939 Nag. 150).

3. *Venugopal v. Venkata Subbiah* (I. L. R. 39 Mad. 1196, 1199).

4. *Naurangi Lal v. Ram Charan Das* (A. I. R. 1930 Pat. 455).

5. *Anand Prakash v. Narayan Das* (A. I. R. 1931 All. 162).

6. *Magbul Ahmad v. Omkar Pratap* (A. I. R. 1935 P. C. 85).

7. *Comilla Electric Supply Ltd. v. East Bengal Bank Ltd.* (A. I. R. 1939 Cal. 669); *Perichappa v. Nachiappa* (A. I. R. 1932 Mad. 46); *M. and S. M. Ry. Co. Ltd. v. Bezvada Municipality* (A. I. R. 1944 P. C. 71, 73).

(2) The proper way to regard a proviso is as a limitation upon the effect of the principal enactment.<sup>8</sup>

(3) A proviso should not however be held to be a mere implication to withdraw any part of what the main provision has enacted.<sup>9</sup>

(4) Arguments drawn from a proviso which seek to extend the operative effect of a substantive enactment are not legitimate unless there is a real ambiguity in the latter.<sup>10</sup>

(5) When there is a proviso to a penal clause which is capable of a double construction, one of which does and the other does not impose a penalty, the court would favour the latter construction.<sup>11</sup>

11. A memorandum of appeal shall be accompanied  
Court-fees on appeals. with court-fees at the following rates:—

(a) in an appeal against the decision of the Board under sub-section (3) of section 23 or under sub-section (2) of section 35—a court-fee of Rs. 2,

(b) in an appeal against an award—on the amount in dispute at the rate payable on a memorandum of appeal presented to a civil court under item VII of 1870. 1 of Schedule I of the *Court-fees Act, 1870*, as if the award was a decree of a subordinate civil court.

## COMMENTARY

*Scope of the section*:—This section makes provisions as to the levying of court-fees on the memoranda of the appeals provided for

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8. *Musamat Raj Rani v. Dwarka Nath* (A. I. R. 1933 Oudh. 491, 500).

9. *Commissioner of Income-tax, Madras v. Suppan Chettiar* (A. I. R. 1930 Mad. 124).

10. *Ram Chander v. Gowri Nath* (A. I. R. 1926 Cal. 927); *West Derby Union v. Metropolitan Life Assurance Society* (1897) A. C. 647.

11. *Khemchand v. Commissioner of Income-tax* (A. I. R. 1934 Sind 46).

in S. 9 (1). It makes a distinction between the appeals from decisions and those from awards. With respect to the former, it prescribes by clause (a) a specially fixed fee of Rs. 2 and with respect to the latter it provides for the levying of *ad valorem* fees on the memoranda of appeals calculated in view of the amounts awarded, according to the scale prescribed in Item No. 1 in Sch. I to the *Indian Court-fees Act, 1870*.

Thereout the term "Award" has been defined in S. 2 (1) as "an award made by the Board under S. 24, 54 or 55 or as confirmed or modified by the Court under S. 9." As however the question of levying court-fee is likely to arise before an appeal is decided and therefore before there is any occasion for the Court to confirm or modify an award, that term must, for the purpose of this section, be taken to mean "an award made by the Board under S. 24, 54 or 55." The term "decision" has not however been defined in this Act. Nor has it been defined in the *Code of Civil Procedure, 1908*, or the *Bombay Land Revenue Code, 1879*, the definitions of words and expressions given wherein are by S. 2 (16) of this Act made applicable to proceedings under this Act in connection with those words and expressions occurring in it which have not been defined therein. We must therefore understand the said word in its ordinary dictionary meaning of "a judgment".<sup>1</sup> Now although "an award" is also "a decision of an arbitrator on a point referred to him",<sup>2</sup> there is no cause for doubt as to what is meant by the word "decision" in S. 11 (a) because there are the subsequent indicative words "of the Board under sub-section (3) of section 23 or under sub-section (2) of section 35."

This is a section containing a fiscal enactment which has the effect of taxing a subject who resorts to a court for the redress of his grievance. There are provisions of a similar nature in SS. 23 (4), 24 and 60 also of this Act. It would therefore be well to bear in mind the following general rules for the interpretation of such class of enactments, enunciated in reported decisions.

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1. *Wharton's Law Lexicon*, 1938, p. 305.

2. *Op. cit.* p. 103.

*Rules for the interpretation of fiscal enactments:*—(1) The courts are not entitled to speculate as to the real or supposed intention of the legislature when the language of the enactment to be construed is clear.<sup>3</sup>

(2) But when the language thereof is not clear, taxing statutes must be construed strictly against the crown and in favour of the subject.<sup>4</sup> This is a dictum of English law found in Maxwell's *Interpretation of Statutes* but adopted by Indian Judges in many cases. Barlee J. while construing an Indian statute in the case of *Commissioner of Income-tax, Bombay v. Reid*<sup>5</sup> explained it as meaning that the Treasury cannot tax without the permission of the Legislature. One test approved by the Federal Court for this purpose is that the scope of the charging sections should be determined by a reference to the machinery sections.<sup>6</sup>

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3. *Piara Singh v. Mula Mul* (A. I. R. 1923 Lah. 655); *Nannu Mul v. Ram Chander* (I. L. R. 53 All. 334); *Bhulan v. Bachcha* (A. I. R. 1931 All. 380); *Damodar Prasad v. Masudan Singh* (A. I. R. 1928 Pat. 85) following *Partington v. Attorney-General* (38 L. J. Ex. 205); *Shantiniketan Co-operative Housing Society Ltd. v. Madhavlal* (A. I. R. 1936 Bom. 37); *Bank of England v. Vagliano Bros.* (1891) A. C. 107; *Robinson v. Canadian Pacific Ry. Co.* (1892) A. C. 481.

4. *Hira Chand v. Emperor* (A. I. R. 1931 Lah. 572); *Devji Goa v. Irikamji* (A. I. R. 1935 Pat. 396); *Mahomed v. Kalibar Rehman* (A. I. R. 1932 All. 526); *Chuni Lal v. Sheo Charan Lal* (A. I. R. 1925 All. 787); *In re Har Krishna Das* (A. I. R. 1931 All. 401); *Emperor v. Kadarbhai* (A. I. R. 1927 Bom. 483); *Madras Central Urban Bank Ltd. v. Corporation of Madras* (A. I. R. 1932 Mad. 474); *Ishwar Dayal v. Amba Prasad* (A. I. R. 1935 All. 667); *Mewa Ram v. Municipal Board, Muttra* (A. I. R. 1939 All. 466); *Nek Mahomed v. Emperor* (A. I. R. 1936 All. 83); *Sharanbasappa v. Saganbasappa* (A. I. R. 1935 Bom. 256); *Ram Chand v. Secretary of State* (A. I. R. 1936 Sind. 108); *Jatindra Nath v. Madan Mohan* (A. I. R. 1936 Cal. 813); *Mulji v. Municipal Commissioner of Bombay* (A. I. R. 1939 Bom. 471, 476); *Messrs. Lovedale Clark Ltd. v. Chairman, Jalpaiguri Municipality* (A. I. R. 1937 Cal. 551); *Tenant v. Smith* (1892) A. C. 150.

5. I. L. R. 55 Bom. 312, 321.

6. *In re Reference under S. 213 of the Government of India Act, 1935* (A. I. R. 1944 F. C. 73, 77-84).

(3) The courts should not strain the language of a fiscal enactment in order to tax a subject<sup>7</sup> and they should hold no case to fall within it except as the result of a reasonable construction put upon it.<sup>8</sup> If the technical language of a taxing statute is to be strained at all it must be strained in favour of the subject.<sup>9</sup>

(4) In such cases the court has always to look to the form of the claim in order to see how much fee is leviable. Parties may, in order to pay as much less income as possible, avail themselves of any camouflage which the law allows or does not forbid.<sup>10</sup>

(5) A taxing statute must, no doubt, on the one hand, be construed liberally and favourably to a subject, but on the other, equality and impartial justice in the incidence of taxation are of greater moment and the statute must be so construed as to promote equality and impartiality of justice.<sup>11</sup>

(6) The benefit of a doubt in such a case must be given to the subject provided the doubt is reasonable.<sup>12</sup>

(7) In construing a fiscal enactment the court must bear it in mind that it is not concerned either with the spirit of the law or the intention of the legislature but with the actual wording of the statute

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7. I. L. R. 55 Bom. 312, 318; *Commissioner of Income-tax, Bombay v. Chunital B. Mehta* (A. I. R. 1935 Bom. 423, 425) in which *Dock Company of Kingston-upon Hull v. Browne* (36 R. R. 459) is referred to.

8. *Dattatray v. Emperor* (A. I. R. 1937 Bom. 28); *Corporation of Madras v. Secretary of State* (A. I. R. 1940 Mad. 653).

9. *Income-tax Commissioner v. Behari Lal* (A. I. R. 1937 Oudh 416) *Sobhan Khan v. Mohammad Eusoof* (A. I. R. 1938 Rang. 141).

10. *Pathumma Umma v. Mohiddeen* (A. I. R. 1928 Mad. 929).

11. *Commissioner of Income-tax, Bihar and Orissa v. Vishweshwar Singh* (A. I. R. 1935 Pat. 342); *Auriya Pay Office v. N. A. Committee, Auriya* (A. I. R. 1938 All. 302).

12. *Commissioner of Income-tax, Bihar and Orissa v. Kameshwar Singh* (A. I. R. 1934 Pat. 178).

unless such considerations are permitted by its own language,<sup>13</sup> There can be no taxation by inference or analogy.<sup>14</sup>

(8) A court would not draw an inference adverse to the subject if a rule made under a fiscal enactment such as the Court-fees Act is ambiguous.<sup>15</sup>

12. No decision or award of the Board shall be modified or set aside in appeal except  
Grounds of appeal. on any of the following grounds:—

- (a) such decision or award was improperly procured,
- (b) corruption or misconduct of the Board or any member thereof, in the conduct of the proceedings relating to such decision or award,
- (c) any illegality or irregularity in the proceedings relating to such decision or award, which has occasioned failure of justice,
- (d) any error of law or erroneous appreciation of evidence which has occasioned failure of justice.

### COMMENTARY

*Scope of the section* :—This section lays down the only grounds on which the Court, to which an appeal is made against an award or decision of the Board, can modify or set aside the same.

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13. *Radha Govind v. Rama Brahma* (A. I. R. 1936 Cal. 714); *Ganpatrao v. Emperor* (A. I. R. 1932 Nag. 174); *John Earnest v. Jogendra Chandra*. (A. I. R. 1935 Cal. 298).

14. *South India Railway Co. v. Panchayet Board, Mandapam* (A. I. R. 1943 Mad. 733, 736-37); *Kumbhakonam Municipality v. Kumbhakenam Bank* (A. I. R. 1944 Mad. 449, 450); *Maharaja of Kapurthala v. Income-tax Commissioner, Oudh*. (A. I. R. 1945 Oudh 35, 41); *Kameshwer Singh v. Rajbansi Singh* (A. I. R. 1943 Pat. 433, 440); *Kyaw Zan v. U Tun Hla U* (A. I. R. 1941 Rang. 126, 127); *Dawlat Ram v. Municipal Committee, Lahore* (A. I. R. 1941 Lah. 40, 43).

15. *In re Venkataratnam* (A. I. R. 1941 Mad. 639, 640).

*Ground (a):*—Thereout ground (a) is worded in such general terms that attempts are likely to be made to bring within its purview all cases not falling under any of the three succeeding grounds. It seems to have been inserted in order to cover cases of partiality which may be the result of some influence brought to bear on the Board or any members of it but which cannot be held to be instances of corruption or misconduct on the part of the Board or any of its members. It might also cover cases in which the Board and the members individually may be perfectly innocent but they may have been misguided or kept in the dark as to a material point by a member of the Board's establishment as the result of corruption or misconduct on his part or of some influence brought to bear on him. But as in a judicial matter the Court cannot go outside the record of the case, the case set up under this clause must be capable of being borne out by the record before the Court.

*Ground (b):*—This ground relates to actual bribery or misconduct of the Board or any of its members while conducting the proceedings relating to the decision or award appealed from. "Misconduct" here must be understood in the same sense in which it was understood under Para. 15 of Schedule II to the *Civil Procedure Code, 1908*. Technical misconduct would therefore be deemed to have been included therein. It would not necessarily imply moral turpitude and would include neglect of duties and responsibilities and what courts of justice would expect from the Board and its members before allowing finality to their awards and decisions.<sup>1</sup> Violation of the principles of natural justice such as hearing evidence of one party in the absence of the other without giving the latter an opportunity of meeting and answering it,<sup>2</sup> would be considered misconduct. Proceeding with the work although there may be no quorum as prescribed by S. 4 (4) would, on the principle laid down in *Thammi-*

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1. *Ganga Sahai v. Lekhraj* (I. L. R. 9 All. 253); *Amir Begum v. Badrudin* (I. L. R. 36 All. 336 P. C.); *Tyebbhair v. Abdul Husen* (25 Bom. L. R. 392).

2. *Cursetji v. Crowder* (I. L. R. 18 Bom. 299); *Mahomed Afzal v. Abdul Hamid* (7 Lah. L. J. 463=88 I. C. 161).

*raju v. Bapiraju*<sup>3</sup> and *Nand Ram v. Fakir Chand*<sup>4</sup>, be held to be misconduct within the meaning of this clause. So would the making of inquiries as to matters relating to the proceedings from outside sources in the absence of the parties, according to the principle acted upon in *Abdul Hamid v. Muhammad*<sup>5</sup> and *Bhaiya v. Jageshwar*.<sup>6</sup> In this connection it must be borne in mind that decisions under other Acts containing the same or similar words or expressions must be made use of with great caution. The principles on which that can be done have been stated under the sub-heading *Other Acts not in pari materia* in the course of the Commentary on the expression *Reference to subject* occurring in S. 2 of this Act.<sup>7</sup>

*Ground (c)* :—Under this head will fall all cases in which there has been an illegality *i. e.* a violation of the specific provisions of law or an irregularity *i. e.* a failure to observe the rules of procedure laid down by this Act or the Rules made under it. But in order that an illegality or irregularity may entitle a party affected by it to get the award or decision modified or set aside, it must have resulted in a failure of justice, *i. e.* to say, the award or decision must have been otherwise than it should, according to law, have been. It should be noted here that there is a distinction between the wording of ground (c) of this section and ground (c) contained in S. 115 of the *Civil Procedure Code, 1908*, as pointed out below :—

*S. 12(c) of this Act.*

“x x x any illegality or irregularity in the proceedings relating to such decision or award which has occasioned a failure of justice.”

*S. 115(c) of the C. P. Code*

“If such Subordinate Court appears x x x to have acted in the exercise of its jurisdiction *illegally or with material irregularity.*”

Great care must therefore be exercised before applying the rulings under S. 115 (c) of the *C. P. Code* to cases arising under S. 12 (c) of this Act.

3. I. L. R. 12 Mad. 113.

4. I. L. R. 7 All. 523.

5. I. L. R. 8 Lah. 329.

6. I. L. R. 52 All. 988.

7. See pp. 33-34 *supra*.



*Ground (d)*:—This ground seems to have been intended to cover cases of a wrong view of any of the provisions of the substantive law of the province which includes both the statutory law and the personal laws of the parties concerned and of an erroneous evaluation of the evidence, oral, circumstantial or documentary, that may be on the record. Here too the error of law or erroneous appreciation of evidence in order to justify a modification or reversal of the award or decision of the Board must have resulted in a failure of justice as above-explained. The cases of errors in law, subject to the above limitation, will be similar to those which are contemplated by ground (a) in S. 100 of the *Civil Procedure Code*, and therefore cases under it, can, with due caution as above, be made use of in giving effect to the provisions of this part of ground (d) in this section. Similarly cases of erroneous appreciation of evidence resulting in a failure of justice are those contemplated by ground (c) in S. 100 of the same *Code* so far as it concerns a substantial error or defect in the procedure provided by any other law for the time being in force. Therefore cases falling under that provision of the *Code* can, with due caution, be made use of in giving effect to the provisions of this part of ground (d) in this section.

*Restraint on jurisdiction*:—This section puts a considerable restraint even upon the limited jurisdiction to hear appeals against the kinds of awards and decisions mentioned in S. 9 inasmuch as it confines that jurisdiction to the classes of cases specified in the four grounds mentioned therein. Therefore even if an appeal against an award or decision of a Board has been filed the Court cannot grant relief to the appellant by way of modification or reversal of the award or decision unless it is made out that the case falls under any of the specific grounds mentioned therein. In the case of such a provision of law questions of jurisdiction naturally arise. When such questions do arise the following principles of interpretation in addition to those mentioned in the Commentary on S. 9 above would, it is hoped, be found useful.

*Rules for the interpretation of provisions curtailing a court's jurisdiction*:—(1) A Judge can amplify his jurisdiction by putting

a reasonable construction on the words of a statute but he cannot strain the language thereof for that purpose. This means that he would be within the law if he can do that without doing violence to such language.<sup>8</sup>

(2) A right vested in a court of law cannot be taken away by mere inferences depending on individual inclinations or interpretations.<sup>9</sup> A mere creation of a special remedy and a special tribunal for its enforcement does not mean ouster of jurisdiction.<sup>10</sup>

(3) The exclusion of the jurisdiction of a civil court is not to be readily inferred. Even when it is made expressly or by necessary implication, the courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.<sup>11</sup>

13. In the hearing of appeals made under this Act,  
the Court shall follow the pro-  
cedure provided in the *Code of* V of 1908.  
*Civil Procedure, 1908*, for the hearing of appeals from  
original decrees so far as may be applicable.

## COMMENTARY

*Scope of the section* :—This section provides for the procedure to be followed by the Court to which an appeal has been made, in hearing it. In doing so, it does not lay down any new and independent rules but only extends those contained in the *Code of Civil Procedure, 1908* as regards the hearing of appeals from original decrees, which means those which are called First Appeals. Those provisions are contained in Rules 9 to 34 of Or. XLI of Schedule I to the said *Code*. In order

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8. *Khudabux v. Punjo* (A. I. R. 1930 Sind 265 F. B.)

9. *Deputy Commissioner v. Budhu Ram* (A. I. R. 1937 Lah. 38 F. B.)

10. *Karam Devi v. Radha Kishan* (A. I. R. 1935 Lah. 406).

11. *Secretary of State v. Mash & Co.* (A. I. R. 1940 P. C. 105, 110).

that an indiscriminate use thereof may not be made it adds that it shall be made so far as the procedure therein prescribed can be made applicable. The Court will thus have to use its judicial discretion while determining whether and how far any particular rule out of those above-mentioned is applicable to an appeal before it.

14. Notwithstanding anything contained in any other law, no further appeal shall lie against a decision or order of the Court under this Act.

Court's decision  
or order to be final.

### COMMENTARY

*Scope of the section* :—This section contains a negative provision prohibiting an appeal against the decision or order of the Court, whether it be the Court of the District Judge, that of an Assistant Judge, of a F. C. Subordinate Judge which has decided the appeal. The effect thereof is that such decision or order will be final and no second appeal would lie against it.

*Jurisdiction of Superior Courts* :—This is therefore a provision affecting the jurisdiction of the superior courts, which would be that of the District Judge if the decision or order had been passed by an Assistant Judge or a F. C. Subordinate Judge and that of the High Court if the decision or order had been passed by a District Judge. Such a provision appears to have been necessary because unless expressly barred a second appeal would lie in such cases under the provisions of S. 100 of the *Civil Procedure Code, 1908* and because it has been ruled by several High Courts that there is no presumption as to ousting or restricting the jurisdiction of the superior courts and that an intention to do so must be in express terms.<sup>1</sup> What is meant by this proposition has been further made clear by the Calcutta High Court in *Narsing Das's case* by saying that it is not necessary that

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1. *Balwant v. Secretary of State* (7 Bom. L. R. 497); *Ibrahim v. Musamat Zainab* (A. I. R. 1935 Lah. 613); *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 445, F. B.); *Musamat Ketaki Kuar v. Shea Narain* (A. I. R. 1931 All. 796, 707).

there should be express words for this purpose but that what is necessary is that the language used must be clear and unambiguous, showing the intention of the legislature to take away the jurisdiction of a superior court. From the fact that what is barred is a "further appeal" it can legitimately be inferred that a revision application under S. 115 of the *Civil Procedure Code, 1908* is not barred. The right to make one conferred by it cannot be deemed to have been taken away except by an express provision or by a necessary implication. There can be no such implication in this case because a revision application is an extraordinary remedy while an appeal is an ordinary one.<sup>2</sup>

The expression "any other law" used in this section must be deemed to contain a reference to that contained in S. 100 of the *Civil Procedure Code*. It is the general law of procedure applicable to all proceedings of a civil nature and an appeal to a District Judge under S. 9 (1) of this Act would be deemed to be a proceeding of such a nature. The provisions of Rules 9 to 34 of Order XLI of Schedule I to the said *Code* have also been made applicable to such an appeal by S. 13 of this Act, so far as they may be applicable. Still no second appeal would lie under this Act on account of this clear provision to the contrary. Whether inspite of this a revision application to the High Court against the decision of the District Court in an appeal under this Act would or would not lie under S. 115 of the *Code* may be deemed by some open to question. But my own view is that a prohibition against such an application cannot be inferred from the clear wording of this section barring only "a further appeal," and the requirements of S. 115 of the *Code* being fulfilled owing to the "District Court," to which an appeal is preferable under S. 9 (1) of this Act, being "subordinate" to the High Court of Bombay, there seems no valid reason why such an application should not be deemed to be maintainable as ruled in *Pandurangrao's case* under S. 37 of the Act, cited in the preceding paragraph.

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2. *Pandurangrao v. Sheshadasacharya* (46 Bom. L. R. 711), a decision under S. 37 of the Act as it originally stood; *Gulam Hussain v. De Souza* (31 Bom. L. R. 988) which contains a dictum that there is a presumption in favour of giving jurisdiction to the Highest Court. *Amanat Begum v. Bhajan Lal* (8 All. 438 F. B.) relied on.

The said expression cannot, as ruled in *Bhim Raj v. Munia Sethani*<sup>3</sup> have reference to the Act itself in a section whereof it is contained nor to any provision contained in the *Dekkhan Agriculturist Relief Act, 1879*, which it repeals by S. 85 with effect from the date of establishment of a Board for any local area or for a class of debtors in such area, so far as that area is concerned.

The High Court of Bombay cannot however be deemed to have jurisdiction to entertain a revision application against an order of a Board passed during the course of a proceeding under S. 17 or S. 23, because a Board is not a Court<sup>4</sup> and an appeal can be made to a District Court against the award passed ultimately in such a proceeding.

15.\* (1) A Board shall in all proceedings under this Act be subject to the control of the District Court within the local limits of whose jurisdiction it is established.

(2) The District Judge or any person authorised by him may inspect or cause to be inspected any property, books or documents in possession of or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board and may pass such orders therein as he thinks fit.

#### COMMENTARY.

*Scope of the section and change in the law:—*This section as it originally stood placed the Board under the control of the Court of

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3. A. I. R. 1935 Pat. 243.

4. See the ruling in 47 Bom. L. R. 852.

\* The words "District Court" were substituted for the words "Court of the First Class Subordinate Judge" and the word "Special" before the word "Jurisdiction" in sub-section (1) of this section was deleted by S. 6 (1) of Bom. Act VIII of 1945 and the word "District" was substituted for the words "First Class Subordinate" before the word "Judge" in sub-section (2) of this section by S. 6 (ii) of the said Amending Act.

the First Class Subordinate Judge (Civil Judge, Senior Division) within the limits of whose special jurisdiction it may have been established, with respect to all the proceedings conducted before it. As amended, it transfers that control to the District Court within the local limits of whose jurisdiction the Board may have been established. According to S. 40 of the Amending Act, this change becomes effective from the date of coming into force of the said Act in the case of the Boards then in existence which were the eight appointed in 1942.

*Sub-section (1):*—This sub-section contains a general provision vesting control over the Board in the District Court within whose jurisdiction it is established.

A doubt is sometimes raised in the courts as to the nature of that control *i. e. to say*, whether it is for administrative purposes only or whether it is for judicial purposes as well *i. e. to say*, whether it can, like S. 115 of the *C. P. Code*, be deemed to confer on the District Judge an extraordinary jurisdiction to call for the record of a case before the the Board on the application of a party, examine it, call upon the other party to the case to show cause by serving it with a notice, hear the arguments of both on the point of irregularity raised before him and pass any order, confirming, modifying or reversing that passed by the Board. I have therefore patiently and carefully thought over this point. The opinion expressed in the first edition of this work, namely that the control spoken of here is administrative control only, was most probably based upon the following considerations namely:—(1) It seems from the provisions of SS. 6, 9 to 12 and 14 of the Act to be the policy underlying this Act to leave the Boards free to decide all the questions of law and fact arising before them to the best of their abilities without interference during the progress of the proceedings before them and to provide for justice being done ultimately by allowing appeals in the case of all awards and specified classes of decisions and orders putting an end to the proceedings so far as the Boards are concerned; (2) If the Bombay Legislature had intended to confer such an extraordinary jurisdiction on the District Courts in cases in which appealable awards are to be ultimately made, just as the High Court exercises over the courts subordinate to it under S. 115 of the *C. P. Code*, in cases in which no

appeal lies, it would have defined the classes of cases in which it could be exercised as the Indian Legislature has done while enacting the said section of the *Code*. The provisions of sub-section (2) cannot be deemed to do so, because what it does is merely to indicate who shall exercise the control vested in the District Court by sub-section (1) and the directions in which it is to be exercised. Surely a District Judge cannot be deemed empowered by that sub-section to exercise extraordinary jurisdiction through "a person authorised by him" as he is no doubt empowered by it to get the work of inspection done; (3) "To call for the record of any case decided by a Board" is not one of the acts which a District Judge is empowered by sub-section (2) to do or get done by a person authorised by him and in the absence of it, such an important power cannot be deemed to have been conferred impliedly on him; (4) By omitting to make such an express provision the Legislature cannot be deemed to have intended to leave genuine grievances unredressed because all orders which put to an end to the proceedings before the Board are appealable under S. 9 (1) and all those which do not put an end to them can be made the grounds of an appeal after an award is made, provided of course they fall within the categories mentioned in S. 12 out of which (c) and (d) are so comprehensive as to include all cases of failure or denial of justice; (5) Even under the *Civil Procedure Code* which is applicable to proceedings under this Act, "so far as may be" under Rule 35, interim orders are not appealable except as specifically provided in Or. XLIII of Schedule I to the *Code* and the District Courts to which the civil courts are subordinate cannot entertain revision applications against those orders which are made in appealable cases and which are not specifically mentioned in the said Order.

As against them the only circumstance to be weighed is that whereas S. 14 of this Act expressly bars "a further appeal against the decision or order of the Court under this Act," and whereas S. 18 of the *Central Provinces Debt Conciliation Act, 1933*, S. 28 of the *Sind Debt Conciliation Act, 1941*, S. 38 of the *Bengal Agricultural Debtors Act, 1935*, S. 22 of the *Punjab Relief of Indebtedness Act, 1934* and S. 22 of the *Madras Debt Conciliation Act, 1936* contain



express provisions against the entertainment of appeals and revision applications against orders passed under the respective Acts, there is no such express prohibition in this Act against the entertainment of revision applications against the orders passed by the Boards in appealable cases. However it is the High Court alone that has an inherent extraordinary jurisdiction of such a character and that too in non-appealable cases by virtue of and within the limits imposed by S. 115 of the *Civil Procedure Code* so far as regular suits are concerned and by S. 25 of the *Provincial Small Causes Courts Act*, so far as suits decided by the civil courts in the exercise of their Small Cause Court powers are concerned. I have therefore come to the conclusion that the view expressed in the first edition of this work as to the scope of this section is the only correct one and must be adhered to until the High Court of Bombay decides otherwise in some case and that decision is authoritatively reported.

*Sub-section (2)* :—This sub-section further particularly provides for the inspection of the property etc., in the possession or under the control of the Board and for statements, etc., being called for in the exercise of the power of administrative control conferred by sub-section (1). It is permissible under it for the District Judge concerned either to go personally to inspect the property, etc., or to depute any one else bound by his orders, to do so on his behalf and make a report to him. It would also be within his discretion to call for statements, accounts, reports, copies of documents or such other information relating to any of the proceedings before, or to the duties of, the Board and pass such orders thereon as he thinks proper, instead of going out for a personal inspection or deputing any one else for that purpose and the Board concerned would be bound to carry out such orders also.

16. Where any period is fixed or granted by the Board for the doing of an act prescribed or allowed by this Act, the Board may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power of Board  
to enlarge time.



*\* Provided that the period for doing one single act either at one time or at different times, shall not be enlarged by more than 30 days.*

## COMMENTARY

*Scope of the section:*—This section confers on the Board a general power to extend the period fixed or granted for doing any act in relation to the proceedings before it, as and when it pleases. It is remarkable that it empowers the Board to extend the time fixed for any purpose even after that time has expired and that since it does not contain any words requiring an application being made by a party for that purpose, the Board can extend the period fixed for any purpose even *suo moto*. This is a power similar to that conferred on the civil courts with respect to references to arbitration made through them by Para. 8 of Schedule II to the *Civil Procedure Code 1908*, which gave effect to the ruling of the Allahabad High Court in the case of *Har Narain v. Bhagwant*.<sup>1</sup>

*Change in the law:*—The main provision in the section which alone was originally in the Act set no limit on the Board's power to enlarge the time fixed or granted for the doing of any Act in connection with a proceeding before it. The addition of the proviso now sets a limit of 30 days on that power to be exercised with reference to any single Act whether it is exercised at a time or bit by bit according to the circumstances of each particular case.

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\* The proviso to this section was added by S. 7 of Bom. Act VIII of 1945 as one of expedients calculated to contribute towards a speedier disposal of cases by the Boards.

1. I. L. R. 10 All, 137.

## CHAPTER III.

### PROCEDURE FOR ADJUSTMENT OF DEBTS.

17. (1) Within eighteen months from the date on which a board is established under section 4, any debtor may make an application to the Board for the adjustment of his debts under this Act as hereinafter provided.

*\* Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief ( Amendment ) Act, 1945, this sub-section shall be construed as if for the word " eighteen " the word " six " were substituted.*

Bom. VIII  
of 1945.

(2) Unless the debtor has already made an application under sub-section (1), his creditor may make an application to the Board for the adjustment of his debts within the period specified in sub-section (1).

(3) An application under this section shall be made to the Board established for any local area if the debtor or any of the debtors who is a party to the application ordinarily resides in such area, or to the Board established for the class of debtors, if the debtor or any of the debtors who is a party to the application belongs to the said class.

(4) When more than one application has been made to the same or different Boards by or in respect of the same debtor or one or more of the joint debtors,

(a) if the Boards are established within the local limits of one Court, that Court, and

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\* This proviso was added by S. 8 of Bom. Act, VIII of 1945.

- (b) if the Boards are established within the local limits of more than one Court, a District Judge or a Joint Judge appointed in this behalf by the Provincial Government,

shall after holding such inquiry as it or he thinks fit, direct that all such applications shall be dealt with by any one of such Boards as may be specified in the direction :

Provided that the Board so specified shall be one of the Boards referred to in sub-section (3).

(5) No objection as to the place of presentation of the application shall be allowed by the Board or the Court, unless such objection was taken at the earliest opportunity before the Board to which the application was made and unless there has been a consequent failure of justice.

#### COMMENTARY

*Scope of this Chapter* :—With S. 17 begins the third chapter of the Act. The first chapter thereof comprising SS. 1 to 3 and bearing the heading PRELIMINARY contains provisions as to the title, extent and commencement of the Act, definitions of certain words and expressions occurring therein and a general clause applying the definitions, of other words and expressions, occurring in the Act but not defined in S. 2, contained in the *Code of Civil Procedure Code, 1908* and the *Bombay Land Revenue Code, 1879* so far as they may be applicable in view of the context in which the word or expression occurs and lastly a saving-clause, excluding certain kinds of debts from the operation of certain sections of the Act. The second chapter headed *Constitution and Powers of the Board and of the Court in appeal* provides for the setting up of Debt Adjustment Boards of two types according to the needs of various localities and of certain classes of debtors, the general powers of the Boards in relation to the matters falling within their cognizance, for appeals being filed against specific awards and decisions of the Boards, for charging court-fees and

following a particular procedure, &c., in connection with the appeals and for the administrative control over the Boards. These provisions too are more or less of a formal nature.

The special remedy provided for in this Act for relieving the agricultural debtors of their liabilities so far as they affect individual money-lenders forms the subject-matter of Chapters III and IV of this Act. Thereout Chapter IV again, which contains provisions enabling a Board or a Court to declare an agricultural debtor insolvent *suo moto* and take further proceedings, as if the declaration had been made under S. 27 of the *Provincial Insolvency Act, 1920*, is likely to come into operation only in certain cases if certain conditions are fulfilled. Hence it is Chapter III alone that is the most important chapter of this Act as the provisions contained therein are likely to be of use in the case of all agricultural debtors seeking relief under this Act. That Chapter comprises SS. 17 to 67A of this Act. Thereout those which concern the special remedy provided for by this Act are :—Sections 17 to 22, 26, 31 to 33, 35, 37, 38 to 46, 47, 48 to 57, and 59 to 66. Sections 23, 24 and 25 relate to the settlement of debts arrived at without interference by the D. A. Boards, either before or after an application under S. 17 has been made and the legal effect of a settlement not brought to the notice of the Board as provided for. Sections 27 to 30 and 34, 36, 58, 67 and 67A relate to matters of procedure only. The cumulative effect of all these provisions will be found discussed under the heading *Remedy provided by the Act* in the *Introduction* to this Act.

*Heading of this Chapter* :—It can be readily understood that in view of the nature of the contents of this chapter its heading “Procedure for the adjustment of debts” is not sufficiently comprehensive. When such is the case the rules of interpretation relating to such headings given in the beginning of the Commentary on Chapter I above<sup>1</sup> will, I hope, be found useful.

*Special tribunals and the civil courts* :—From the facts, that S. 4 of this Act provides for the appointment of Debt Adjustment Boards, that this section and several others in this chapter give jurisdic-

tion to such Boards to take exclusive cognizance of proceedings started under this Act subject to the control of the District Judges within the limits of whose jurisdiction they may have been established, and that S. 37 directs the ordinary civil courts to transfer to them all pending suits, applications for execution and proceedings relating to the recovery of a debt in which are involved questions as to whether the person from whom the recovery is to be made is or is not a debtor under this Act and whether the total amount of his liability on the relevant date did or did not amount to Rs. 15,000, it can be inferred that this is a special piece of legislation providing for a special remedy being availed of by certain classes of persons for checking a specific mischief. From the fact that the jurisdiction of the civil courts to entertain certain classes of suits and proceedings is ousted by S. 73 it can be further inferred that it affects the jurisdiction of such courts under the ordinary laws. This is not the first instance in which an Indian Legislative has thought fit to do so. Even apart from other evils, that consisting of the heavy indebtedness of the agriculturist debtors has itself been attacked in several other provinces of India by the special pieces of legislation whose titles have been mentioned in an Appendix hereto and whose principal features have been mentioned in the Introduction. An amount of case law has therefore grown up around them. Believing that the judicial principles deducible therefrom will be helpful in dealing with cases arising under this Act so far as the question of jurisdiction is concerned I give them below :—

(1) It is a cardinal principle of the construction of statutes that those which set up special tribunals ousting the jurisdiction of the ordinary civil courts, must, as a rule, be construed strictly.<sup>2</sup>

2. *Vythilinga v. Temple Committee, Tinnevely Circle* (A. I. R. 1931 Mad. 801); *Koyal v. Bhond Lal* (A. I. R. 1931 Nag. 48); *Gulamhusen v. Clara De Souza* (I. L. R. 53 Bom. 819); *Baldeo Das v. Lal Nilmani Nath* (A. I. R. 1928 Pat. 615); *Cheta v. Baija* (I. L. R. 9. Lah. 38); *Ganesh Das v. Hira Lal* (A. I. R. 1926 Nag. 212); *Musamat Dhanpati Kuar v. Kandhaiya Baksh* (A. I. R. 1930 Oudh. 371); *Ali Mahomed v. Hakim* (A. I. R. 1928 Lah. 121); *Muthammal v. Secretary of State* (24 M. L. J. 405); *Maung Ba Lah v. Liquidator, K. T. Co-operative Society* (A. I. R. 1933 Rang. 124); *Chan Pyu v. Chan Chor* (A. I. R. 1923 Rang. 238); *Vaikunth Bhat v. Sarvottam Rao* (A. I. R. 1936 Mad. 574); *Susai Odayar v. Swami Nath Iyer* (A. I. R. 1936 Mad. 522); *Ibrahim v. Musamat Zainab* (A. I. R.

(2) There is a general presumption against an intention of the legislature to oust the jurisdiction of the civil courts.<sup>3</sup>

(3) Such an intention can therefore be inferred from the language of the statute only if there are in it clear words for that purpose or if the words used therein are such that such an inference drawn from them can be deemed to be reasonable.<sup>4</sup>

(4) Ouster of jurisdiction should not be readily inferred. Even when it is made expressly or by necessary implication, the courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.<sup>5</sup>

(5) A judge can amplify his jurisdiction by putting a reasonable construction on the words of a statute but he cannot strain the language thereof for that purpose.<sup>6</sup>

(6) An alteration in jurisdiction embodied in a specific enactment cannot be effected by implication in a statute which has nothing to do with that jurisdiction.<sup>7</sup>

*Special Remedy provided by this Act* :—It will further be seen that this Act provides a special remedy for eradicating the indebtedness of the agricultural debtors, for whereas the usual procedure is by way of a suit, this Act enables a party to get same relief by way of an application under this section. It also provides by S. 19 for getting the preliminary information which may either lead to a settlement or to an application under this section with the knowledge of the view-point

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R. 1935 Lah. 613); *King Emperor v. Dahu Raut* (A. I. R. 1935 P. C. 89); *Abdul Rahman v. Abdul Wahab* (A. I. R. 1935 Nag. 120); *Gir Har Saroop v. Bhagwan Din* (A. I. R. 1935 Oudh 96).

3. *Bulwant v. Secretary of State* (7 Bom. L. R. 497).

4. *Shantha Nand Gir v. Basudevanand* (A. I. R. 1930 All. 225, 230 F. B.); *Hayatuddin v. Masamat Rahiman* (A. I. R. 1935 Sind. 73, 75).

5. *Secretary of State v. Mask and Co.* (A. I. R. 1940 P. C. 105, 110).

6. *Khudabux v. Punjo* (A. I. R. 1930 Sind 265 F. B.).

7. *Dehra Dun Electric Tramway Co. Ltd. v. Nabha State Agency* (A. I. R. 1936 All. 826).

of the other party. Lastly, it also provides for making an application under S. 23 for getting a private settlement recorded and an award made in terms thereof, which is a procedure differing from that provided for in para 20 of Schedule II to the *Civil Procedure Code, 1908*. In such cases one established rule of interpretation is that the special remedy provided for must be resorted to.<sup>8</sup> Another is that a remedial statute must be so construed as to suppress the mischief aimed at and advance the remedy provided thereby.<sup>9</sup> See also the other rules applicable to such statutes given under the heading *Character of this legislation* in the *Commentary on the Title and Preamble*.

*Scope of the section* :—This section as explained above relates to the special remedy provided by this Act for the relief of agricultural debtors from their indebtedness. It is sub-divided into 5 sub-sections, out of which the first two relate to the method and period of time for taking advantage of the remedy, which consists of an application to be made to a D. A. Board, the third is likely to enable the party wishing to take advantage of it to know which Board should be approached for that purpose, the fourth makes provision for the regulation of business of the Boards when some complicate situation arises and the fifth lays down the limit upto which a technical objection as to the place of presentation of an application can be allowed.

*Sub-sections (1) and (2)* :—Those sub-sections enable (1) a person who is a debtor according to S.2 (6) of this Act as amended, read with S.2 (5), (8) and (12) to (14), to make an application for the adjustment of his debts to the D. A. Board for the local area in which he ordinarily resides or for the class of debtors to which he belongs, and (2) a creditor of a such a debtor to get his claim against the latter adjusted, according to the provisions contained in the subsequent sections of this chapter.

*Period of limitation and the change in the law relating thereto* :—The period of limitation within which any of them could do

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8. *Chunilal v. Ahmedabad Municipality* (I. L. R. 36 Bom. 47) ; *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358).

9. *Diwan Singh v. Emperor* (Appeal—A. I. R. 1936 Nag. 55, 62).

so according to sub-section (1) was 18 months from the date of establishment of the Board concerned under S. 4 of this Act. That sub-section was required to be read along with the first proviso to S. 54 (2) (b). When it was so read the period of limitation for making an application was reduced to one year in the case of a debtor who wanted to avoid being liable to pay the costs of the application in the event of his neglecting to make it within that period and the creditor making an application within the remaining six months under sub-section (2) of this section. The full period of 18 months was however available to a debtor who was unmindful of such a liability falling upon him. That proviso to S. 54 (2) (b) has now been deleted. Moreover in the case of the Boards established after the coming into force of *Bom. Act. VIII of 1945* i. e. after 21st April 1945, the said period of 18 months has been reduced to 6 months from the date of establishment of the Board concerned. The combined effect of the said deletion and reduction is that a debtor as well as a creditor has a period of 6 months within which to make an application under this section and that a debtor incurs no liability by refraining from making one within a particular portion of that period.

Another important change worth noticing here is that though the saving-clause in S. 32 (1) which permitted a Board to take cognizance of a claim preferred by a creditor by an application made after the prescribed period, if good and sufficient cause was shown by him, has been deleted sub-section (2) of the said section is still there in its original form. If therefore a creditor making an application to a Board under S. 17 after the prescribed period alleges that his debtor had, by his declaration, act or omission, intentionally caused or permitted him to believe that he was not a debtor for the purposes of this Act and that no application under S. 17 can be entertained by any Board in respect of any debt owed by him to the creditor, by reason of the provisions of S. 26, i. e. to say, by reason of the fact that the total amount of his liabilities on the relevant date exceeded Rs. 15,000, the Board, if otherwise competent to entertain such an application, must entertain that creditor's application, decide the question of fact above-mentioned as a preliminary point and if its decision is in the affirmative, must



treat the application as one made in the usual course and proceed with it, although at the date of the application the prescribed period may have elapsed.

*Modification of these provisions by those of S. 26 :—*Although both these sub-sections do not lay down any limit as to the total amount of debts for the adjustment whereof an application would lie under them, they are controlled by S. 26 which prohibits the entertainment, of any application under them for the adjustment of the debts of a debtor the total amount of whose debts exceeds Rs. 15,000 as calculated upto 1st January 1939, by the Boards set up prior to 21st April 1945 and upto the date of establishment of the Board concerned by those set up after that date.

*Sub-section (3) : Forum for applications under sub-sections (1) and (2) :—*The forum for making an application under either sub-section (1) or sub-section (2) is determined by the ordinary place of residence of the debtor, whatever may be the place of residence of the creditor. If one Board has been established for the local area in which the debtor resides, then an application must be made to that Board but if within such area different Boards have been established for different classes of debtors residing within that area, then an application against a debtor must be made to the particular Board established in that area for the class of debtors to which the debtor in the application belongs. Thus, for instance, if a Board has been established at Godhra in the Broach and Panch Mahals district for all non-Bhil debtors and another has been established in the Dohad Taluka for the debtors of the Bhil class residing in the said district, then even if a Bhil debtor resides in or near Godhra, an application by or against him must be made to the latter not to the former Board.

*Sub-section (4) :—*This sub-section provides for the contingencies in which more than one application have been made to the same Board or to different Boards by or in respect of the same debtor or by or in respect of one or more of the joint debtors concerned. The provision that it contains is that an order can, in such a contingency, be made that all such applications shall be dealt with by any one of such Boards as may be specified in the order. The authority for passing

such an order vests under this section in (a) the District Court within the local limits of whose jurisdiction the Board concerned may have been established or (b) a Joint Judge appointed in this behalf by the Provincial Government, if the Boards concerned are situated within the local limits of more than one Court. The Court or the Judge, whoever has jurisdiction under this sub-section, is required to pass an order as above after holding such inquiry as may be considered fit in the circumstances of the case. Since no particular mode of making an inquiry is specified here, it would be within the power of the Court or the Judge to adopt any that may be found suitable, provided of course that it is consistent with the principles of natural justice.

*Meaning of the word "Court" in this sub-section:*—In order to determine the meaning of the word "Court" in this sub-section reference must be made to S. 2 (4). Clause (a) of that sub-section provides that the word "Court" in S. 17 and certain other specified sections shall mean the Court of the District Judge to which an appeal lies against the decision of a Board under S-9 (1).

There was an anomaly in this S. 2 (4) (a) as it originally stood. It was explained and solutions there of were suggested in the first edition of this book. It is not necessary to repeat them here because the anomaly has been removed by the fact of the District Court alone having now been invested with the power to entertain appeals against specified awards and decisions of a Board.

*Proviso to the sub-section:*—The whole of this sub-section is subject to the proviso that the Court or the Judge must specify in his order under this sub-section such a Board only as would be one of those referred to in sub-section (3).

In case of a doubt as to the effect of this proviso on the sub-section see the Commentary on S. 10 under the heading *Proviso as an aid to interpretation*.

*Sub-section (5):*—This sub-section lays down two restrictions on the liberty of a party to an application under this section to raise objections as to the jurisdiction of the Board. They are (1) that the objection must have been raised at the earliest opportunity before the

Board concerned and (2) that the filing of the application before a wrong Board must have resulted in a failure of justice. It should be particularly noted that both the conditions must be fulfilled before such an objection can be allowed either by a Board or a Court before which it is raised. For the rules pertaining to this section see the relevant Appendix.

18. (1) Every application made under section 17 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner.

Form and verification of application.

(2) It shall be accompanied with such court-fee as may be payable under the *Court-fees Act, 1870*, as if the application was a plaint in a suit for accounts.

#### COMMENTARY

*Scope of the section* :—This section provides for making rules and prescribing forms for the application to be made under the preceding section. This has been done by Rule 16. (See the relevant Appendix ).

*Sub-section (1)* :—This sub-section leaves it to the Provincial Government to prescribe the form in which an application under S. 17 (1) or (2) should be made, provides that it shall be signed and verified but leaves it to the said Government to determine the manner of doing so. The forms prescribed by that Government are Nos. 1 and 2 in the relevant Appendix.

*Sub-section (2)* :—By this sub-section the Legislature has provided that an application under S. 17 of this Act shall for the purpose of the court-fee payable thereon, be treated as a plaint in a suit for accounts. Some explanation of this is necessary.

*Court-fee on applications under S. 17 (1) and (2)* :—Under S. 7 (4) (f) of the *Court-fees Act, 1870*, which has been made applicable by the sub-section to applications under S. 17 (1) and (2) of this Act, the plaintiff is at liberty to put his own valuation on the

claim in a suit for accounts and pay *ad valorem* fee according to Item No. 1 in Sch. I to the Act. The least amount at which it is permissible to value a claim for accounts under that provision is Rs. 5 and accordingly an applicant under this section can file an application on affixing a court-fee stamp of as. 6 only. That fee has been temporarily raised by 25% with effect from 1-1-44 (See SS. 1 and 2 of and the Schedule to Bom. Act XV of 1943).

*Exemption in the case of debtors of backward tribes in certain areas:*—The Government of Bombay has by Govt. Not. R. D. No. 585/45 dated 9th August 1945 issued under S. 35 of the *Court fees Act, 1870*. (VII of 1870) and published at 120 of Part IVA of the B. G. G. dated August 16, 1945, remitted the fee payable, under Article I in Schedule I annexed to the said Act, read with sub-section (2) of section 18 of this Act (Bom. XXVIII of 1939) in respect of an application made under S. 17 (1) of the latter Act by a debtor who is a member of any of the backward tribes specified in Part II of the Thirteenth schedule annexed to the *Government of India (Provincial Legislative Assemblies) Order, 1936*, in the following areas, namely:—

1. Umbregao taluka and Mokhada petha of the Thana district; 2. Shahada and Taloda talukas of the West Khandesh district; 3. The Satpura Hills Reserved Forest Area in the Chopda, Yawal and Raver talukas of the East Khandesh district and 4. Kalwan taluka and Peint petha of the Nasik district.

The backward tribes mentioned in Part II of Schedule XIII to the G. of I; Order, 1946 are:—*Bombay*:—1. Barda; 2. Bavacha; 3. Bhil; 4. Chodhra; 5. Dhanka. 6. Dhodia; 7. Dubla; 8. Gamit or Ganta; 9. Gond; 10. Kathodi or Katkari, 11. Konkna; 12. Koli Mahadeb; 13. Mavchi; 14. Naikda or Nayak; 15. Pardhi including Advichincher or Phanse Pardhi; 16. Patelia; 17. Pomla; 18. Powara; 19. Rathwa; 20. Tadvī Bhil; 21. Thakur; 22. Valvai; 23. Varli; 24. Vasava.

*Court-fee on interim applications:*—The other provisions in the Act for the payment of court-fee are those contained in S. 11, 23 (4), 24, 54 (2) (m), 60 (1) and 61. All of them except the first relate to the payment of court-fee on the awards made under the different sections of this Act. The first provides for the payment of court-fee on appeal memos. From amongst the Rules, No. 24 provides for the payment of process-fee in the form of court-fee stamps on summonses.

There is no specific section in the Act or specific rule amongst the Rules prescribing any court-fee for interim applications and any process-fee in the shape of court-fee on notices. There is thus no "permission of the legislature" for demanding the payment of court-fees on such applications and on notices, which, according to the ruling in the case of *Commissioner of Income-tax, Bombay v. Reid*,<sup>1</sup> is necessary for such a purpose. Rule 35 can be of no use in such a case because it relates only to matters of procedure and there is no section or rule applying generally all the provisions of the *Indian Court-fees Act, 1870* to proceedings under this Act.

19. (1) After the coming into force of this Act, but notwithstanding the fact that any application has not been filed under section

Every creditor and debtor to file a true and correct statement before Board.

17—

- (a) every creditor, on being required to do so by a notice in writing by any of his debtors, shall, within one month from the date of the receipt of such notice, file before the Board referred to in sub-section (3) of section 17 a true and correct statement of all his claims against such debtor, and shall at the same time send a copy thereof to such debtor, and
- (b) every debtor, on being required to do so by a notice in writing by any of his creditors, shall within two months from the date of the receipt of such notice file before the Board referred to in sub-section (3) of section 17 a true and correct statement—
- (i) of all debts owed by such debtor ;

(ii) whether he holds any land used for agricultural purposes and whether he has been cultivating land personally;

(iii) of his income from agriculture and from sources other than agriculture in the year preceding the date of the notice.

The debtor shall at the same time send a copy of such statement to such creditor.

(2) Every debtor or creditor giving a notice under sub-section (1) shall at the same time send a copy thereof to the Board.

(3) In awarding the costs of any proceeding in respect of any application made under section 17 the Board may, on being satisfied that the statement required to be filed under sub-section (1) was, without sufficient cause, not filed within the time specified therein, direct the party in default to bear the whole or any portion of the costs of such proceeding.

### COMMENTARY

*Scope of the section*.—At first sight this section may seem unconnected with the remedy provided in S. 17 above inasmuch as its provisions are to have effect “notwithstanding the fact that any application has not been filed under section 17”. However it is not only not quite unconnected with that remedy but provides for a preliminary step which an intending applicant can and would necessarily be required to take before making such an application because obviously a debtor of the agriculturist class, who is proverbially illiterate, could not be expected to have in his possession all the information which S. 17 (1) of this Act requires him to supply, and a creditor-applicant too would stand in need of getting from his debtor such and so much information about his affairs as he is expected to supply while making an application under S. 17 (2). The Legislature has therefore wisely cast

by this section a duty on both of them to assist each other in availing himself of the remedy provided by this Act. In view of this it appears that the proper place of this section in this chapter was before SS. 17 and 18.

*Sub-section (1):*—The section has been sub-divided into 3 sub-sections. The first thereof is again sub-divided into two clauses (a) and (b). Out of them (a) is intended to be of use to the debtor in getting the necessary information from the creditor and (b) is intended to be of use to the creditor in getting such information as he would stand in need of from his debtor.

*Procedure for getting the information:*—In each case the party requiring information must give a notice in writing to the other party and that party is bound to supply the correct information as to the points mentioned in each clause, in the form of a statement filed before the Board having jurisdiction in the matter. He is also required to forward a copy of such statement to the party giving the notice.

*Time for supplying the information:*—A creditor served with a notice as above is required to file such a statement within one month of the receipt of the notice by him while a debtor is required to do so within two months of the receipt of the notice by him.

*Sub-section (2):*—This sub-section requires each party giving a notice to send a copy thereof to the Board having jurisdiction in the matter.

*Sub-section (3):*—This sub-section backs up the duty to file a statement as required and supply a copy thereof to the party giving the notice, by a sanction, lest the duty be disregarded. That sanction is that the Board is empowered by this sub-section to saddle the party in default with the whole or a portion of the costs of the proceeding, if any, started subsequently under S. 17. The condition precedent for the exercise of this discretionary power is that the Board must be satisfied that the default had been committed without sufficient cause. This means that the party who has failed to file a statement as required by sub-section (1) within the prescribed period would be at liberty to show that there was a sufficient cause for not complying with the requisition.



As to what should be deemed to be a "sufficient cause", the Board must decide it (1) in view of the circumstances that may have been disclosed during the course of the proceeding and (2) the rulings under the same expression occurring in S. 5 of the *Indian Limitation Act, 1908*.

*This section and S. 23 :—*It is possible that the provisions contained in this section may be useful as well for making an application under S. 23 as for making one under S. 17, if on the required particulars being supplied the party calling for them feels that the difference, if any, between him and the other party is capable of being adjusted amicably and arranges for its being done either directly or through common friends.

*This section and sections 26 and 86 :—*The provisions of this section can also be made use of in order to determine whether the debtor is or is not one for the adjustment of whose debts an application under S. 17 or 23 can be made. If it is found that the total liabilities of the debtor as calculated upto 1-1-39 in the case of the debtors within the jurisdiction of the old Boards established upto the date of coming into force of the Amending Act i.e. 21-4-45 and upto the date of establishment of the Board concerned in the case of the others, exceeded Rs. 15,000, none of the above applications can be made by or against him by virtue of the provisions of S. 26 and therefore advantage can be taken of the temporary provisions contained in S. 86, which allow the remedy available under the *Deccan Agriculturists Relief Act, 1879*, being made use of for a period of three years from the date of commencement of the operation of this Act in any particular area in connection with transactions entered into before the said date.

20. If the payment of a debt due by a debtor is guaranteed by a surety or if a debtor is otherwise jointly and severally liable for any debt along with any other person and if the surety or such other person is not a debtor, the debtor, may make an application under subsection (1) of section 17 for relief in respect of such debt

Application by debtor jointly and severally liable.



and the Board may after consideration of the facts and circumstances of the case proceed with the adjustment of debts under this Act so far as such applicant is concerned.

### COMMENTARY

*Scope of the section* :—Section 17 ( 1 ) of this Act contemplates the case of there being only one debtor liable for a debt and of the debt, if at all, being secured by an encumbrance on his property. This section extends the right to make an application under S. 17 ( 1 ) to ( 1 ) a debtor, the payment of whose debt is guaranteed by a surety and ( 2 ) to one who is otherwise jointly and severally liable with other persons for the payment of a debt. The right is exercisable even if the surety or the co-debtor is not a person answering to the description of a “debtor” contained in S. 2 ( 6 ).

*Board's duty on receipt of such an application* :—When an application has been made to a Board by such a debtor, its duty is to take into consideration the facts and circumstances of the case and decide whether it should or should not proceed with the adjustment of the debts so far as the applicant is concerned. In order to get the necessary facts before it, the Board may have to examine the debtor, summon the surety or other debtors as the case may be, and the creditor or creditors concerned, and examine them and make such other investigation as may be necessary. It has ample powers under this Act to do so.<sup>1</sup>

*This section and S. 37* :—It has been ruled<sup>2</sup> by Rajadhyaksha J. that this section and S. 37 of this Act are complementary to each other and that therefore if there is a suit, application for execution or other proceeding before a civil or revenue court involving the questions mentioned in S. 37 ( 1 ) with respect to even one of the persons who are the defendants or the opponents therein, the suit, application or proceeding must under S. 37 (1) be transferred to the competent Board.

1. See SS. 33-34 of this Act.

2. *Musa Hasafji v. Keshavlal* ( 48 Bom. L. R. 613 ).

21. No application shall lie under section 17 for adjustment of any debt due from a debtor to whom such debt has been transferred or assigned after 1st January 1938 if such debt was originally incurred by any person who is not himself a debtor.

Assignees from non-debtor not entitled to benefit of this Act.

### COMMENTARY

*Scope of this section* :—This section provides against a possible misuse of the provisions of S. 17 by a person who is not a *bona fide* debtor as defined in S. 2 ( 6 ) of this Act by resorting to a camouflage consisting of the transfer or assignment of his own debt to one who is such a debtor. Since such a camouflage could not have been conceived prior to the idea of Government to make such legislation being known to the public and since it could not have been known till the Government of Bombay as re-constituted under the *Government of India Act, 1935* itself resolved to do so, there could be no plausible ground for suspecting the *bona fides* of a transferor or assignor of a debt who had assigned that debt prior to that resolution. As that resolution was most probably made in the early part of the year 1938, this section provides against the maintainability of an application under S. 17 by one who, though himself a debtor at the date of the application or even at that of the commencement of the operation of this Act within the meaning of S. 2 ( 6 ), had allowed the particular debt incurred by a non-debtor to which the application relates to be transferred or assigned to himself by that non-debtor, after the 1st of January of that year. This date remains unaltered by the Amending Act even in its application to the applications made to the Boards established after 21st April, 1945.

22. (1) An application made by a debtor under sub-section ( 1 ) of section 17 shall contain a statement of debts, in the prescribed form, which shall include the following:—

Statement of debts to be included in application.

(a) the name of the place where he ordinarily resides;

- (b) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as it is known to the debtor, and a note whether each such claim is admitted by the debtor;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;
- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety, together with the names and addresses of all such persons;
- (e) particulars of all the debtor's property, both movable and immovable, including the property situate outside the Province *or in any local area for which a Board has not been established under section 4\** and claims, if any, due to the debtor, a specification of its value and of the places where it may be found and details of any attachment, mortgage, lien or charge subsisting thereon, together with the names and addresses of the co-sharers, if any, of the debtor;
- (f) particulars of any property as in clause (e) which has been transferred by the debtor together with the name and address of the transferee; and
- (g) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under sub-section (2) of section 17 shall contain a statement of debts, in the prescribed form, which shall include the following:—

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\*The words in italics were inserted by S. 3 (a) of Bom. Act VI of 1941.

- (a) the name of the place where the debtor ordinarily resides;
- (b) the total amount of every debt claimed by the creditor to be owing to him from the debtor;
- (c) the history of each such debt and the particulars of the original principal and the rate of interest chargeable;
- (d) the names and addresses of the other creditors so far as they are known to the creditor; and
- (e) particulars, so far as they are known to the creditor, of the debtor's property including the property situate outside the Province *or in any local area for which a Board has not been established under section 4.\**

(3) Notwithstanding anything contained in section 3 a statement filed under this section shall contain the amount and particulars of all debts specified in that section due by the debtor.

(4) The Board may return for amendment any application if it is not complete and in proper form.

### COMMENTARY

*Scope of the section* :—The provisions of this section are ancillary to those of S. 17. It requires certain particulars to be given by each applicant in his application under that section in the form of a statement. Those particulars are naturally different in the case of a debtor-applicant and a creditor-applicant. This section has been subdivided in four sub-sections. The first two thereof specify the particulars to be given in each of such statements. Out of the other two sub-sections, the third explains what kinds of debts are to be shown in

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\* The words in italics were inserted by S. 3 (b) of Bom. Act, VI of 1941.

the statements and the fourth gives the Board concerned power to enforce the provisions of the first three.

*Sub-section (1) :—*This sub-section requires a debtor to append to his application a statement of debts in a prescribed form containing the particulars about them mentioned in clauses (a) to (g) thereof. For the form appropriate for this purpose see the relevant Appendix.

*Sub-section (2) :—*The creditor's application under S. 17 (2) is required to be accompanied by a statement containing the particulars mentioned in clauses (a) to (e) thereof. For the form appropriate for this purpose see the relevant Appendix.

*Sub-section (3) :—*This sub-section is remarkable in that it requires the amount and particulars of the debts due to Government and others, exempted from the operation of S. 17 and others by S. 3, to be mentioned in the statement to be filed under this section. The words "Save as otherwise expressly provided in this Act" in that section had left room for such a provision as is contained in this sub-section. The object in making it seems to be that although such debts are not liable to be investigated into and sealed down, the Board should know them while entering the required particulars to be mentioned in the award.<sup>1</sup>

*Sub-section (4) :—*This sub-section authorises the Board to return for amendment any application not containing the required particulars or not in proper form. Since it contains a reference to the form of the application also it must be held to have a reference also to S. 18 and the relevant Rules and Forms given in the Appendix relating thereto.

23. (1) If any debtor and any or all of this creditors arrive at a settlement in respect of any debt due by the debtor to the creditor, the debtor or any of the creditors may, within thirty days from the date of such settlement make an application for recording such settlement to the Board to which an application under section 17 lies.

Application for  
recording settlement.

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1. See S. 54 (2) (c) (f) (g) and (h).

(2) Every such application shall be in the prescribed form, and shall be signed and verified in the prescribed manner. It shall be accompanied with a court-fee of Re. 1.

(3) On receipt of such application the Board shall after giving a notice in the prescribed manner to the creditor or the debtor, as the case may be, and after making such enquiry as it thinks fit, if it is satisfied that the settlement arrived at is *bona fide* and is not made with intent to defeat or delay any of the creditors of the debtor, and is in the interest of the debtor and that the debtor is a person who fulfils the conditions referred to in clauses (a) and (b) of sub-section (1) of section 35 record such settlement and certify the same. Every such settlement so recorded and certified shall be binding and shall not be re-opened.

\*(4) After the Board has recorded and certified a settlement under sub-section (3), the Board shall call upon the debtor to make a declaration whether there are any other debts due by the debtor which are not included in the settlement. If the debtor makes a declaration that there are no such debts *and the Board is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit*, the Board shall make an award in terms of the settlement. *The court-fee payable on such award shall be Re. 1 and shall be payable on it before is transmitted to the Court under S. 61.*

(5) If the Board is satisfied after recording such settlement that there are other debts due from the debtor

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\*The words in italics in the last but one sentence and the whole of the last sentence in italics were added and the words and figure "under section 54" which originally occurred after the words "shall make an award" in the last but one sentence were deleted by S. 9 of Bom. Act VIII of 1945.

which are not included in the settlement, the Board shall treat the application made under sub-section (1) as an application for adjustment of debts made to it under section 17.

### COMMENTARY

*Scope of the section and change in the law:*—This section is quite unconnected with the main remedy as to the adjustment of debts and contains an independent provision for the recording of the settlement of a debt, arrived at without reference to the Board having jurisdiction in the matter and for making an award in terms thereof if unobjectionable. The settlement may be arrived at either after getting a statement from the other party under S. 19 or even without getting one. In either case the Board to which an application under S. 17 would lie, would be bound to record the settlement if the conditions laid down in this section are found to have been fulfilled. This shows that the policy of the legislature is to encourage debtors and creditors to settle their disputes without the Board's interference. The only sub-section of this section which was amended by the Act of 1945 was sub-section (4). The words which have been added therein by S. 9 of that Act have been printed in italics. The words "under section 54" which followed the word "award" in the second sentence of that sub-section, as it originally stood, have now been deleted. This makes it easy to act upon the direction contained in the sentence. The newly-added last sentence puts the award made under S. 23 on a par with that made under S. 24 of the Act.

This section has been sub-divided into 5 sub-sections which provide for the remedy by way of an effective amicable settlement. The first 3 thereof prescribe the procedure to be followed upto the stage of recording and certifying the settlement embodied in the application made under this section and the next two enjoin the Board to make an inquiry as to whether the debtor concerned has or has not other liabilities and if he has, to treat that application itself as one made under S. 17 of this Act.

*Sub-sections (1) to (3):—Sub-section (1):*—If a settlement has been arrived at between a debtor and any of his creditor in respect of any debt

or debts due to the latter, either the debtor or the creditor is entitled under this sub-section to make an application for recording it, to the Board which would have jurisdiction to entertain an application under S. 17.

*Time for making an application under this sub-section:—*

One of the conditions which must be satisfied before the alleged settlement can be recorded is that the application for that purpose must have been made within 30 days of the date of the alleged settlement. If the date is in dispute the Board would have to ascertain it by taking evidence with respect thereto and to compute the period of thirty days from that date.

*Sub-section (2) :—*An application for the above purpose is required by this sub-section to be in form No. 3 prescribed by rule 16 in the relevant Appendix, signed and verified in the prescribed manner and accompanied with a court-fee of Re. 1.

*This section and section 26 :—*It should be borne in mind that S. 26 prohibits the entertainment of an application, as well under this section as under S. 17, if the total amount of the liabilities of the debtor concerned as calculated up to 1-1-39 in the case of the debtors within the jurisdiction of the Boards set up before the commencement of the Amending Act of 1945 and the date of the establishment of the Board concerned in other cases, exceeds Rs. 15,000. Hence the provisions of this section, like those of S. 17, must be understood to be subject to those of S. 26 although it is not clearly stated so in this.

*Sub-section (3) :—*This sub-section lays down the steps to be taken and the inquiry to be made by the Board before ordering the settlement to be recorded and further provides that once such an order is made, the settlement shall be deemed to be final and binding on the parties and shall not be re-opened.

*Duties of the Board under this sub-section :—*The first step that the Board is required to take on receipt of an application under this section is to give a notice in the prescribed form to the opponent or opponents mentioned in the application. The party on whom such a notice is served gets by such notice the necessary information as to



the application filed against him and is given an opportunity to prefer objections, if any, against it on or before a particular date and informed that in case of default the application would be considered *ex parte*. The next step to be taken by the Board is to make an inquiry in order to satisfy itself (1) that the settlement is *bona fide* and is not made with a view to defeat or delay any of the creditors of the debtor, (2) that it is in the interest of the debtor and (3) that the debtor is a person who fulfils the conditions referred to in clauses (a) and (b) of S. 35 (1). Those conditions are (1) that the debtor must be one who can be held to be a debtor according to the provisions of S. 2 (6) read with S. 2 (5), (8) and (12) to (14), and (2) that the total amount of debts due by him on 1st January 1939 or the date of establishment of the Board concerned, as the case may be, did not exceed Rs. 15,000. The terms of the second condition make it clear that it can be deemed to have been fulfilled even if the total amount due at the date of the application exceeds the said amount provided that the excess is due to advances made subsequent to the said date or to the accumulation of interest.

Such an inquiry would have to be made in the presence of the opponent or opponents present in response to the notice and a conclusion must be arrived at on hearing his or their objections, if any. No particular method has been prescribed for making it. Still it must presumably be made by the same method as is required to be adopted in the case of a similar inquiry with reference to an application under S. 17. If the Board is satisfied on the said points, it will be its duty to record and certify the settlement so as to give it finality and a binding character. It cannot afterwards be re-opened as between the parties thereto.

*Sub-sections (4) and (5) :—*The Board's duty does not however end with recording and certifying the settlement for that would be binding only on the parties thereto. It must therefore further call upon the debtor under sub-section (4) to make a declaration whether there are any other debts, not included in the settlement, due by him. If he makes such a declaration and the Board is satisfied that the settlement has been made by the debtor voluntarily and is to his

benefit, it should make an award in terms of the settlement. After it is made but before it is sent for registration the applicant must, according to the newly-added last sentence in sub-section (4) pay a court-fee of Re. 1. The words "under section 54", which originally existed after the word "award" in this sub-section, having been deleted, the award made under this section is no longer one under S. 54 but is of a different nature from that made under it. This is clear from the addition of the figure "23" before the figure "24" in S. 61 (1) below.

The words "and the Board is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit" having been added after the words "no such debts" in the second sentence of sub-section (4) make it clear that so far as the existence of other debts is concerned the Board is to take the declaration of the debtor at its face value and that what it has further to do is to ascertain whether the settlement is or is not voluntary and to his benefit. Whether it is or is not in fraud of other creditors must have been inquired into before recording and certifying the settlement.

If, on the other hand, the Board is satisfied that there are other debts due by the debtor which are not included in the settlement, its duty according to sub-section (5) is to treat the application as one made under S. 17 of this Act and proceed accordingly, *i. e. to say*, to call for particulars under S. 22, to issue notices under S. 31 and if need be, under S. 47 and take such further steps for the adjustment of all the debts of the debtor, as it would take in the usual course.

Sub-section (4) does not seem to be exhaustive. The legislature should have anticipated that other creditors of the debtor, if any, might, on coming to know of such an application having been filed in order to defeat or defraud them, come forward with their claims and oppose the making of an award even though the debtor may have made the required declaration. Such an appearance by a third party is not provided for in this Act. Still there is nothing in it to prevent a creditor to whom the debtor may be indebted, from putting in an independent application under S. 17, provided there is sufficient time for doing so. If such an application is made, the Board would have to make an inquiry as to the truth or otherwise of the allegation as

to fraud made in that application with reference to the one made previously by the debtor or a colluding creditor and it would be only if, as the result of such enquiry, the Board is satisfied of the bonafides of the latter application that it would be possible for it to make an award. This inquiry would be of a nature different from that to be made under sub-section (3) of this section because the latter does not contemplate any opposition from a person not a party to the application. If the Board is not satisfied as above it would have to treat the application as one made under S. 17 of the Act. In case of any unforeseen difficulty or of room for a serious doubt the Board would be well-advised to make a reference under S. 58 (2) read with S. 2 (4) (b). If it is not inclined to do so, it may arrive at a decision on a reference to the rules of construction given under the heading *Meaning of the word court in this section in the Commentary on S. 17 (4)*. The following further rules as to the duty of the courts and their power to fill up lacunæ in an Act, otherwise called *casus omissus*, may also be found useful :—

*Rules as to filling up lacunae in an Act:—*(1) The general rule is that a court has to interpret the law as it stands. It cannot proceed to introduce amendments therein. That is the function of the legislature.<sup>1</sup>

In this particular case the Board would not be encroaching upon the province of the legislature because under S. 6 (1) it has a general power to decide “all questions whether of title or priority or of any nature whatsoever and whether involving matters of law or fact, which may arise in any case within the cognizance of the Board.”

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1. *Abdul Hussein v. Musamat Mohammadi* (A. I. R. 1935 Lah. 364); *Bhagta Nand v. Sardar Mahomed* (A. I. R. 1935 Lah. 150, 153); *Rajah of Mandasa v. Jaganmayakulu* (A. I. R. 1932 Mad. 612, 619); *Gurdial Singh v. Central Board, Sri Durbar Saheb* (A. I. R. 1928 Lah. 337); *Gopi Nath v. Thakurdin* (A. I. R. 1935 All. 636); *Manoo v. Hawabi* (A. I. R. 1936 Rang. 63); *Mrinalini Debi v. Harlal Roy* (A. I. R. 1936 Cal. 339); *H. Hagencister v. U. Po Cho* (A. I. R. 1935 Rang. 53); *Mahomed Naim v. Musamat Muninnissa* (A. I. R. 1936 Oudh. 32 F. B.); *Ganga Sagar v. Reoti Prasad* (A. I. R. 1940 All. 507 F. B.).

(2) It is not concerned with the equitable side of the legislation nor with the logic of it<sup>2</sup> nor with the policy of the legislature underlying it nor with its effect on society.<sup>3</sup>

(3) It cannot add words to a modern statute even in order to avoid hardship<sup>4</sup> or injustice<sup>5</sup> or for any other purpose.<sup>6</sup>

(4) The above is the rule only when the language of the statute is clear and unambiguous. If it is not and is capable of a double construction the court would adopt that which is capable of producing a beneficial result<sup>7</sup> and is consistent with the intention of the legislature.<sup>8</sup>

(5) The court can, in such a case, also add words which are necessarily implied by the text<sup>9</sup> in order to give effect to the intention of the legislature as gathered from the entire statute.<sup>10</sup> It would however be subversive of the accepted legal principles laid down by a host of unimpeachable authorities as a canon of construction to add to a penal or taxing statute words which are not there. Such statutes must be construed strictly and in favour of the subject sought to be affected thereby."<sup>11</sup>

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2. *Prabhu Mal v. Chandan* (A. I. R. 1938 Lah. 638); *Emperor v. Jagiri Lal* (A. I. R. 1938 Lah. 251).

3. *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504); *Emperor v. Hari* (A. I. R. 1935 Sind 145).

4. *R. H. Skinner v. Bank of Upper India* (A. I. R. 1937 Lah. 507); *Kidar Nath v. Bagh Singh* (A. I. R. 1937 Lah. 504).

5. *Darwood v. Sahabdeen* (A. I. R. 1937 Mad. 657).

6. *Naman v. Uttam* (A. I. R. 1938 Lah. 158); *Govind Ram. v. Perumat* (A. I. R. 1927 Mad. 327); *Madho Singh v. James Skinner* (A. I. R. 1942 Lah. 243, 257); *Surjan v. Lajja Ram* (A. I. R. 1943 Lal 45, 49).

7. *Secretary of State v. Vaccum Oil Co.* (A. I. R. 1930 Bom. 597, 599).

8. *C. T. Mudaliar v. Maymyo Municipal Committee* (A. I. R. 1933 Rang. 68) in which *Brown v. National Provident Institution* (1921) A. C. 222 was followed.

9. *Radha Mohan v. Abbas Ali* (A. I. R. 1931 All. 294); *Kamalaranjan v. Secretary of State* (A. I. R. 1938 P. C. 281).

10. *Raja Kotakal v. Malabar Timber Co.* (A. I. R. 1924 Bom. 412); *Rom Chand v. Secretary of State* (A. I. R. 1936 Sind 108); *Ram Chandra v. Ram Lal* (A. I. R. 1940 All. 500); *Nadirshaw v. Manekbai* (A. I. R. 1938 Bom. 218).

11. *Musamat Kesar v. King Emperor* (4 Pat. L. J. 74, 86 F. B.).

For the purpose of a right application of rule 5 of the above rules it is necessary to know the principles on which provisions not expressly made in a statute can be legally deemed to have been implied. I therefore state them below:—

*Implied provisions in a statute:—*(1) It is a well-accepted canon of interpretation that an enactment includes all the incidents and consequences necessarily resulting from it, whether there are or are not express words for that purpose therein.<sup>12</sup> Thus, for instance, little weight is to be attributed to the omission of the words “unless there is something repugnant in the subject or context” which are necessarily implied in all statutes.<sup>13</sup>

(2) Every law is expected to be obeyed and must therefore have a sanction behind it. It must consequently be so construed as to defeat all attempts to evade it directly or indirectly and must be understood to extend to all such circumstances.<sup>14</sup>

(3) The general principle that where an Act confers jurisdiction to pass certain orders it impliedly grants that of doing all that is essentially necessary for its execution,<sup>15</sup> cannot override the more particular provisions of the Act which confer the power.<sup>16</sup>

(4) If a statute gives a major power a minor one must be deemed to have been included therein.<sup>17</sup>

(5) When the law vests discretion in a certain authority to do a thing the courts have an implied authority to see that the discretion is exercised in a proper manner.<sup>18</sup>

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12. *Jai Indar Bahadur v. Brij Indar Kuar* (A. I. R. 1929 Oudh 231) *Narayan v. Desika* (A. I. R. 1933 Mad. 689) following *National Telephone Co. Ltd. v. Postmaster-General* (1913) A. C. 546; *Sarala Dasi v. Calcutta Improvement Tribunal* (A. I. R. 1935 Cal. 29).

13. *Mahommed Manjural Haque v. Bisseswar Bannerjee* (A. I. R. 1943 Cal. 361, 368; *Prithvi Chandra v. Prabhavati* (A. I. R. 1944 Pat. 41, 52).

14. *Mahomed Bagar v. Mahomed Kasim* (A. I. R. 1932 Nag. 210).

15. *Narayan v. Desika* (A. I. R. 1933 Mad. 689).

16. *Ramaswami v. Hindu Religious Endowments Board, Madras* (A. I. R. 1935 Mad. 755).

17. *Ali Raza Khan v. Abdul Rauf* (A. I. R. 1935 Oudh. 457).

18. *Des Raj v. Emperor*. (A. I. R. 1930 Lah. 781, 786).

(6) There is a presumption against an overlapping of powers being contemplated by the legislature.<sup>19</sup>

(7) When a statute creates a right not existing before, it generally creates a corresponding obligation.<sup>20</sup>

(8) In a matter which is governed by a statute, which in some respects gives the court a statutory discretion, there can be implied in the court outside the limits of the Act, a general discretion to dispense with its provisions.<sup>21</sup>

(9) When a parent Act has been repealed all the laws passed under the Act stand repealed unless there is a saving provision in the repealed Act.<sup>22</sup>

(10) General words in a later statute may be deemed to repeal an earlier legislation if both are found to deal with the same subject-matter and the two enactments cannot be reconciled with but are repugnant to each other.<sup>23</sup>

(11) A court would however proceed upon the presumption that the legislature did not intend to repeal the earlier enactment and infer an implied repeal only if that inference is not avoidable.<sup>24</sup>

24. Notwithstanding anything contained in the preceding sections, if during the pendency of proceedings before a Board a settlement is arrived at between a debtor and all his creditors and if the Board is satisfied that the settlement has been made by the debtor voluntarily and is for his benefit, the Board may make an

Settlement during the pendency of proceedings before the Board.

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19. *Madan Mohan v. Commissioner of Income-tax, Punjab* (A. I. R. 1935 Lah. 742, 753). See also *United Provinces v. Musamat Atiqa Begum and Others* (1940) F. C. R. 110.

20. *Sripati Charan v. Kailas Chandra* (A. I. R. 1936 Cal. 331, 334).

21. *Magbul Ahmad v. Omkar Pratap* (A. I. R. 1935 P. C. 85, 88).

22. *Atiqa Begum v. Abdul Maghni Khan* (A. I. R. 1940 All. 272, 275 F. B.).

23. *Hulas Narain v. Province of Bihar* (A. I. R. 1942 F. C. 8, 13); *United Provinces v. Atiqa Begum* (A. I. R. 1941 F. C. 16, 31-32).

24. *Wilcox v. Patel* (A. I. R. 1942 Rang. 30, 35-36); *Nagendra Chandra v. Prabhat Chandra* (A. I. R. 1942 Cal. 607, 609).

award in terms of such settlement. The court-fee payable on such award shall be Re. 1 and shall be payable on it before it is transmitted to the court under section 61.

### COMMENTARY

*Scope of the section :—*This is another section of the Act showing that the policy of the legislature is to encourage debtors and creditors to settle their disputes without interference from the Board as far as possible. The words “during the pendency of proceedings before a Board” clearly show further that a private settlement of debts can be made by a debtor and his creditors even after a proceeding has advanced to any stage short of that of an award. There is nothing also in this section to justify the view that in order that such a settlement may be lawful the Board’s previous permission should be taken. Moreover the settlement may be arrived at either by negotiations between the parties directly or through mediators informally appointed or through arbitrators formally appointed. The Board is not concerned with the way in which it is brought about. What it is its duty to see is (1) that it must have been agreed to voluntarily by the debtor, *i.e.* to say, without the exercise of any undue influence on him by the creditors or any of them, which they can easily do owing to their dominating position, and (2) that it must be for his benefit.

If the Board is satisfied on those two points, it will be its duty to make an award in terms of the settlement. Although the provision with regard thereto is in the permissive words “may make” it has an imperative force because once the Board is satisfied on the said points it cannot reasonably refuse to record the settlement and pass an award in accordance with its terms.

*Court-fee on an award under this section :—*The court-fee payable on such an award is the nominal one of Re. 1 only. This is also an additional reason for inferring that the policy of the legislature is to encourage debtors and creditors to make up their differences amicably as far as possible because this being a distinct kind of award, not referred to in the provisions of S. 60 as to charging court-fee as directed therein, no further fee would be leviable thereon. The award made

under S. 23 (4) as now amended is also on a par with that made under this section.

*Form of the award* :—For the appropriate form of the award to be made under this section see Form No.9 sanctioned for use in this case with suitable modifications by Rule 29 ( 2 ).

25. Any settlement of a debt due from a debtor to any creditor, arrived at after the establishment of a Board under section 4 for the local area in which he ordinarily resides or for the class of debtors to which he belongs shall be void and shall not be recognised by any Board or Court either as an acknowledgement or otherwise unless it is certified by the Board under section 23 or unless an award has been made in terms thereof under section 24.

#### COMMENTARY

*Scope of the section* :—This section backs up the provisions of SS. 23 and 24 by a sanction in this form that any settlement of debts arrived at after the establishment of a Board for any local area in which the debtor concerned resides or for the class of debtors to which he belongs shall be void and shall not be recognised by a Board or Court either as an acknowledgement or for any other purpose unless it has been certified by a Board under S. 23 or unless an award in terms thereof has been made under S. 24.

This sanction is necessary in order to avoid possible mischiefs that may be played by creditors in order to avoid the provisions of this Act.

It is remarkable that in the case of a settlement made before an application is filed under S. 17 voidability and non-recognisability arise if it is not certified. It does not matter whether it is followed by an award or not. But in the case of a settlement made after an application under S. 17 is filed those disabilities arise if an award has not been made in terms thereof. Hence in a subsequent proceeding either



before a Board or Court, a settlement under S. 23 certified but not followed by an award can be made use of as an acknowledgement of the debts to which it relates, but not one made under S. 24, if not followed by an award.

## 26. No application under section 17 or section 23

Application shall be entertained by the Board on behalf of or in respect of any debtor, unless the total amount of debts claimed as being due from him on 1st January 1939 is not more than Rs. 15,000.

*\* Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and words "1st January 1939" the words "the date of establishment of the Board concerned" were substituted.*

## COMMENTARY

*Scope of the section* :—This section by providing that no application shall lie under S. 17 or 23 unless the total amount of debts claimed as due from the debtor concerned on 1st January 1939 in the case of the Boards established before the commencement of the Amending Act of 1945 and on the date of establishment of the Board concerned in that of the other Boards does not exceed Rs. 15,000, imposes a limit on the operation of S. 17 (1) and (2) and S. 23 (1), although there is no reference to it in any of them. Its proper place was as a proviso to each of the sections 17 and 23 and if repetition was to be avoided, as one of the qualifications of a debtor under this Act who has been defined in S. 2 (6). However this fault of draftsmanship should not come in the way of its having its full effect inasmuch as it has a place in the body of the Act, for according to the ruling in *Ashutosh Ganguli*

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\* This proviso was added by S. 10 of Bom. Act. VIII of 1945.

v. *Watson*<sup>1</sup> it makes no difference that an enactment is printed as a sub-section or a separate section, so far as its construction is concerned and according to those in *Aghore Chandra v. Rajanandini Debi*,<sup>2</sup> *Sat Narain v. Mahabir Prasad*,<sup>3</sup> *Sewa Ram v. Prabhu Dayal*,<sup>4</sup> *Someshwar v. Manilal*<sup>5</sup> and *Rangiah v. Appaji*,<sup>6</sup> the true meaning, exact scope and significance of any passage occurring in a statute may be found not merely in the words of that passage but on its comparison with other parts of the statute.

*Previous history of this section and the reason for adding the proviso.*—Although so far as the question of its effect on SS. 17 and 23 is concerned, the previous history of this section is not of any practical use because its language is clear and emphatic, it would be interesting to know how the section came to be in its present form. The Bill as placed before the Assembly at its first reading contained clause 23 according to which no application under clause 17 or 21 (to which the present SS. 17 and 23 correspond) could be entertained unless the total principal amount of secured debts claimed as being due from a debtor on 1st January 1939 as gathered from the deeds filed before the Board was not more than Rs. 15,000 and not less than Rs. 100.<sup>7</sup> When the Bill was returned by the Select Committee, to which it had been referred, clause 21 was re-numbered clause 22 and clause 23 was re-numbered clause 24 and the latter was so modified as to enable a Board to entertain an application under clause 17 or 22 only if the total liabilities of the debtor, whether secured or unsecured, did not exceed Rs. 15,000 or such other sum not exceeding Rs. 25,000 as the Provincial Government may decide. Thus the restriction as

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1. I. L. R. 53 Cal. 929 relying on Craies on Statute Law, 3rd edition, p. 194.

2. A. I. R. 1933 Cal. 283 in which Guha J. refers to the rulings in *River Wear Commissioners v. Adamson* (1877) 2 A. C. 743 and *Eastman Photographic Materials Co. v. Comptroller of Patents, Designs and Trade-marks* (1898) A. C. 571, 576.

3. A. I. R. 1939 Pat. 392.

4. A. I. R. 1935 Oudh 313.

5. 34 Bom. L. R. 206.

6. A. I. R. 1927 Mad. 163.

7. *Bombay Legislative Assembly Debates*, 1939, Vol. V, Pt. II, App. XII

to a debtor having a secured debt of at least Rs. 100 was swept away, so too the maximum limit of Rs. 15,000 was made applicable to all debts generally and the Provincial Government was empowered to raise it to Rs. 25,000.<sup>8</sup> When subsequently the said clause was moved before the Assembly at the second reading of the Bill, 10 amendments were proposed to be made therein. One member proposed to reduce the maximum limit to Rs. 5,000, another wanted to restore the condition as to the minimum limit, a third proposed to retain the maximum limit of Rs. 25,000 but to do away with the power of the Provincial Government to raise it in specific cases, a fourth wanted the minimum limit to be fixed at Rs. 150 and so on. After a long discussion as to the necessity of each of them, which covers 14 pages, the clause, so amended as to fix the maximum limit of debt outstanding on 1-1-39 at Rs. 15,000, to leave no power to the Provincial Government to raise it in any case and to fix no minimum limit, was passed and became the present S. 26 of the Act of 1939.<sup>9</sup> Since the said Act was put into operation in the beginning of 1942 in some selected areas only and it was not open to doubt that relief from indebtedness was required to be given to the agriculturists residing in the other areas of the province, that date would have been inappropriate in connection with the debtors in those areas making applications for adjustment to the Boards established later on. The Amending Act of 1945 has accordingly added a proviso to the section to the effect that in their case the said maximum limit must be considered with reference to the date of establishment of the Board concerned.

*This section and section 35:—*The clause, as worded, makes it clear that it would not matter what the total amount of the debtor's debts is at the date of the application, provided it did not exceed the maximum limit on the relevant date. If this condition is not satisfied, the Board, would, under S. 35, have to dismiss the application unless the creditor or creditors concerned remits or remit so much of his or their claim as to bring the total within the prescribed limit.

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8. *Op. Cit.* Vol. VII, p. 1536.

9. *Op. Cit.* Appendix II, pp. 2556-57.

27. An application for adjustment of debts under section 17 or an application for recording a settlement under section 23 shall not be withdrawn without the leave of the Board.

Withdrawal of application.

### COMMENTARY

*Scope of this section* :—This section contains a provision against the withdrawal of an application made under either S. 17 or S. 23 except with the leave of the Board before which it may have been filed. Ordinarily it is the inherent right of every applicant to decide for himself whether or not to proceed with an application filed by him. But in this case the applicant having once placed himself within the jurisdiction of the Board, invites on himself a disability not to be able to exercise his said right unless his doing so is approved of by the Board. One is therefore naturally tempted to ask why the legislature should have made such a provision. The probable answer is that the right to make an application under S. 17 or S. 23 is a special creation of this statute and the authority which creates a right might as well burden it with an obligation to continue to exercise it until the purpose of the legislature in conferring it is served completely unless there are circumstances approved of by the authority entrusted with the enforcement of that right justifying the exercise of the natural right of withdrawal. The authority would however do well to bear in mind the ruling of the Lahore High Court in the case of *Kartar Singh v. Ladha Singh*,<sup>1</sup> to the effect that "all laws which put a restraint upon human activity and enterprise must be construed in a reasonable and generous spirit."

*This section and section 32* :—This section contains a provision which bears a slight analogy to those contained in Or. XXIII, r. 1 (3) of Schedule I to the *Civil Procedure Code*, 1908. It may be noted in this connection that just as permission given under the rule in the *Code* entitles a party to bring a fresh suit on the same cause of action, that given under this section similarly entitles the party withdrawing the application a right to put in a fresh application under S. 17 or 23, as

1. A. I. R. 1934 Lah. 777.

case may be, according to the amendment made in S. 32 (1) of this Act by S. 12 (i) and (ii) of the Act of 1945.

23. Where two or more applications for adjustment of debts under section 17 are presented by or against the same debtor or where such separate applications are presented against joint debtors, all such applications shall be consolidated.

### COMMENTARY

*Scope of the section* :—This section contains a provision which has for its object a saving of the time and trouble, as well of the parties concerned as of the Board, in that it enables the latter to consolidate, *i. e. to say*, to bundle up together and treat as one, (1) two or more applications made under S. 17 by or against the same debtor, which would be the case if a debtor files separate applications for the adjustment of the debts due by him to several creditors or if each of the creditors of a debtor files a separate application against him for the settlement of his debts only without availing himself of the provisions of S. 19, (1), and (2) two or more such applications made against the same joint debtors, which would be the case if different creditors file separate applications against each of his joint debtors.

*This section and section 20* :—The provisions of S. 20 may, with advantage, be read along with those of this in order to clear up any doubt that may arise with regard to sureties and other joint debtors.

29. Notwithstanding anything contained in section 17, a Subordinate Judge of the First Class or a District or Joint Judge appointed to exercise the powers under sub-section (4) (b) of that section for any local area may on the application of any person or on his own motion transfer at any stage of the proceedings any application for the adjustment of

debts pending before any Board established within the local limits of such Judge to another Board within such limits.

#### COMMENTARY

*This section and section 17 (4):*—Section 17 (4) of this Act contains a provision for a power to be exercised, by the Court or the District Judge or Joint Judge when specially invested, in cases in which more than one application have been made to the same or different Boards by or in respect of the same debtor or one or more of any joint debtors. No order of transfer may have to be made if the several applications to be considered have been made to the same Board. But the Boards to which such applications may have been made may be different. For such cases this section provides for a discretionary power of transfer similar to that contained in S. 24 of the *Civil Procedure Code, 1908*. *Secondly*, the power under S. 17 (4) is exercisable exclusively either by the District Court or the District Judge or Joint Judge who has jurisdiction in the matter as defined in that sub-section. That contained in this section is on the other hand exercisable by the First Class Subordinate Judge or the District Judge or Joint Judge invested with that power under S. 17 (4) (b). *Thirdly*, the power under S. 17 (4) is supposed to be exercised by the Court or the Judge before the proceeding under the applications are commenced while that under this section can be exercised at any stage of the proceedings. *Fourthly*, the power under S. 17 (4) appears to have been conferred for saving costs and trouble to the parties and preventing an avoidable waste of public time while that under this section is provided for in order to avoid the possibility of injustice to any party or to allay the fear of any party that injustice is likely to be done to him owing to the existence of circumstances not falling within the orbit of S. 4 (8). *Fifthly*, whereas there is a proviso under S. 17 (4) restricting the choice of a Board which can be directed to deal with the applications, there is no such proviso under this section. *Lastly*, whereas there is a proviso in S. 17 (4) for holding an inquiry before making an order under it there is no such provision in this section.

It must be noted that unlike SS 9. and 15 this section and S. 58 have remained unamended and therefore the First Class Subordinate

Judges retain so much direct connection with the Boards established within the limits of their territorial jurisdiction.

30\*. If any party to the proceeding before the Board dies, the proceeding shall, unless the Board otherwise directs, be continued after the legal representatives of such deceased party *are, as soon as may be, brought on the record.*

Continuation of proceedings on death of party.

### COMMENTARY

*Scope of the section* :—This section provides for the continuation of proceedings under S. 17 or S. 23 once they are started, even after the death of one of the parties thereto. It impliedly empowers the Board to allow the legal representatives of that party to be brought on record and the saving-clause "unless the Board otherwise directs" gives it a discretion to give a direction to the contrary in any particular case. It does not state on what grounds it can do so.

This clause has even now remained unamended except that the italicised words have been added therein in order to make it clear that if the Board does not use its discretion in any case, an application for bringing the legal representatives of a deceased party can be made at any time. However if the party concerned is guilty of avoidable delay the Board may make use of the discretionary power with which it has been invested by the saving-clause.

31. On receipt of an application for adjustment of debts the Board shall in the prescribed manner—

Service of notice on to creditors to submit statement of debts.

- (a) give a notice to the debtor (unless the debtor is himself an applicant) and to every creditor (other than the creditor who is himself an applicant) whose name and address are given in the application and

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\*The italicised words in S. 30 were substituted by S. 11 of Bom. Act VIII of 1945 for the original words *are brought on the record.*

(b) publish a general notice, requiring the debtor and all creditors to submit a statement in the prescribed form within one month from the date of the service of the notice or the publication of the general notice, whichever is later :

Provided that if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with the notice within the time specified therein, it may extend the period for the submission of the statement.

### COMMENTARY

*Scope of the section* :—This section provides for the first act to be done by the Board towards the progress of the proceedings started under S. 17. That act consists of serving a personal notice and publishing a general notice. The personal notice must be given in the case of a debtor's application to every creditor of his whose name and address may have been given in the application. In the case of a creditor's application it must be given to the debtor and every other creditor of the latter whose name and address is known to the applying creditor and is given in his application.

*Proviso* :— The time fixed for compliance with this notice must as a rule be strictly observed as ruled in the case of *Venugopal v. Venkata Subbiah*.<sup>1</sup> The rigour of that provision is however softened by the proviso to the section which confers upon the Board a discretionary power to extend the prescribed period if good and sufficient cause is shown by any party for his inability to comply with the provision strictly. This power can be exercised by the Board when the inability of the party is brought to its notice either orally or by an application in writing.

This proviso is so worded that a motion for extension for time under it, must, if necessary, be made before the expiry of the period,

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1. I, L, R, 39 Mad. 1196, 1199.



for the wording thereof would have been "is or was unable" if it was intended to provide for the making of a motion under it both during the continuance of and after the expiry of the period, whereas here it is simply "is unable", which grammatically construed presupposes a continuance of the period when a motion is made.

*This proviso and section 16 as amended*:—It seems necessary here to draw the attention of the reader to the provisions of S. 16 of this Act which confers on the Board a discretionary power "to enlarge from time to time the period fixed or granted for doing any act prescribed or allowed by this Act" and to the fact that by virtue of the proviso added to that section by S. 7 of the Amending Act of 1945, this power has been limited to 30 days with reference to any single act. The distinction between the power under it and that under this proviso seems to be that the former is exercisable in all those cases in which the periods are *fixed or granted by the Board* in the exercise of its power to direct the doing of any act prescribed or allowed by this Act within such period as the Board may think proper while this is a special one to be exercised only in the particular case of the submission of a statement in a prescribed form for doing which the period of one month has been *prescribed by the first sub-section itself*. The latter power is exercisable once only after the service of notice in the prescribed form as there are no words in it enabling the Board to extend the prescribed period from time to time. However in case a necessity for a further extension of the period arises, the Board can make use of the general power given by S. 16, because at that stage the question would be one of the enlargement of a prescribed period and for doing that from time to time, the Board has been given a general power by that section, limited as mentioned in the proviso added thereto. There is thus no conflict between the provision contained in this proviso and that in S. 16 of the Act. This is the way in which inconsistency between the provisions of any two parts of an Act can be avoided and a harmony can be brought about between them, which it is the duty of a court to do in such cases, although apparently they may seem inconsistent and one of them may appear redundant or superfluous.

*This section and section 32 as amended*:—It is necessary to remark here that S. 32, as it originally stood, contained a saving-clause

at the end as printed in the foot-note below that section. That clause has now been deleted by S. 12 (ii) of Bom. Act. VIII of 1945. The effect of the deletion is that if a creditor had failed to comply with a notice issued under S. 31, his claim will be treated as discharged even though he may have a good and sufficient cause for not doing so.

*How to avoid an apparent conflict between the different parts of an Act and when to reject one of them as redundant:—*There are certain well-established canons of construction as regards the duty of the courts in case of an apparent conflict between the different parts of an enactment. Assuming that they would be useful in similar cases I give them below:—

(1) Every attempt should be made to avoid inconsistency between the different provisions in an enactment relating to the same point and harmony should be secured between them as far as possible.<sup>2</sup>

(2) Some meaning must be given to every part of an enactment and no part of it should be rejected as redundant or superfluous unless the usual construction of a section leads to an absurdity<sup>3</sup>, which if connived at, would mean doing less than justice to the intelligence of the legislature.<sup>4</sup>

(3) This rule must however be understood to be subject to the usual exception that the words must be capable of being construed in a reasonable manner without unduly straining the language of the section.<sup>5</sup>

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2. *Atmaram v. Ganpati* (A. I. R. 1927 Nag. 132); *Sri Thakurji v. Dwarka Ram* (A. I. R. 1935 Pat. 492); *Madhavrao v. Krishnaji* (I. L. R. 46 Bom. 470) relying on *Salmon v. Duncombe* (1886) 11 App. Cas. 627 P. C.

3. *Megh Raj v. Nand Lal* (A. I. R. 1939 Lah. 558); *Barada Kent v. Sheikh Maijuddi* (I. L. R. 52 Cal. 275, 289); *Chhotey Lal v. Bansidhar* (A. I. R. 1926 All. 653); *Shyam Sunder v. Musamat Savitri* (A. I. R. 1935 All. 723). *Brahma Deo v. Haro Singh* (A. I. R. 1935 Pat. 237, 241); *Bank of Chettinad Ltd. v. Ko Tin* (A. I. R. 1936 Rang. 393); *Tekchand Gurnomal, In re.* (A. I. R. 1936 Sind. 175) relying on *Queen v. Bishop of Oxford* (1879) 48 L. J. Q. B. 609; *Nadirshaw v. Manekbai* (A. I. R. 1918 Bom. 218).

4. *Udeypal Singh v. Laxmi Chand* (A. I. R. 1935, All. 946 F. B.).

5. *Bank of Chettinad Ltd. v. Ma Ba Lo* (A. I. R. 1936 Rang. 152).

(4) In order to avoid a conflict between any two parts of a statute the court must read them together and interpret, and where necessary, even modify the language of the one by that of the other and thus try to arrive at a reasonable and practicable construction of the language of the two sections.<sup>6</sup>

(5) In order that any two provisions in an Act may be called repugnant to one another they should be so contradictory that it would be impossible to carry out both of them.<sup>7</sup>

(6) It is however always dangerous to modify the plain meaning, if any, of a statute by what is claimed to be the result of an inference drawn from judicial rulings merely.<sup>8</sup>

(7) But if the manifest intention of the legislature would be otherwise defeated the court can reject words of surplusage.<sup>9</sup>

(8) Such a governing intention is to be gathered from the sections of the Act and not from the rules made under them and then that part which agrees with that intention must be given effect to and the other which does not should be rejected as repugnant.<sup>10</sup>

In addition to those rules those as to the application of the *ejusdem generis* rule given at pp. 79-80 *supra* may also be referred to in this connection. For the appropriate Rules and Forms see the relevant Appendix.

32. (1) Every debt due from a debtor who ordinarily resides within the local area for which a Board is established under section 4 or who belongs to a class of debtors for which a Board is established under the said section, in respect of which no application has been made under section 17 within the period specified in sub-section (1) of the said section 17, or in respect of which no application for recording a settlement

Debts in respect of which no application for adjustment or settlement is made, to be void.

6. *Nagaratnam v. Seshayya* (A. I. R. 1939 Mad. 361, 365).

7. *Vishwanath v. Harihar* (A. I. R. 1939 Pat. 90).

8. *Thirapatirayudu v. Secretary of State* (A. I. R. 1935 Mad. 70, 71).

9. *Bijaynagar Tea Co. Ltd. v. Indian Tea Licensing Committee* (A. I. R. 1940 Cal. 406).

10. *Narsing Das v. Choge Mul* (A. I. R. 1939 Cal. 435, 451 F. B.).

is made under section 23 within the period specified in the said section 23 or in respect of which an application made to the Board is withdrawn under section 27 *\*and no fresh application is made under sections 17*, and every debt due from such debtor in respect of which a statement is not submitted to the Board by the creditor in compliance with the provisions of section 31 shall be deemed to have been duly discharged.\*

(2) Nothing in this section shall apply to any debt due from any person who has by his declaration, act or omission intentionally caused or permitted his creditor to believe that he is not a debtor for the purposes of this Act and that no application under section 17 can be entertained by any Board in respect of any debt owed by such person to such creditor by reason of the provisions of section 26.

#### COMMENTARY

*Scope of the section* :—This is one of the sections of the Act containing a penal provision intended to ensure the proper observance of the provisions contained in the other sections. In case of any doubt as to its meaning and implication, which are explained below, the rules of interpretation applicable to such provisions given in the Commentary on S. 8<sup>1</sup> may be referred to.

*Sub-section (1)* :—This sub-section contains the main provision, which is to the effect that if any of the defaults specified therein is found to have occurred in connection with a debt due from a debtor that debt must be deemed to have been discharged. This provision covers the case of a debt which though due may not be payable on the date of the application.

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\* The words in italics after the words "withdrawn under section 27" were added by S. 12 (i) of Bom. Act. VIII. of 1945 and the following words namely:—*"unless the Board is satisfied that for good and sufficient cause the creditor did not make an application under section 17 or was unable to comply with the provisions of section 31"* occurring after the word "discharged" were deleted from it by S. 12 (ii) of the said Act.

1. See pp. 84-86 *supra*.

*Defaults specified in this sub-section :--*(1) No application for the adjustment of a debt must have been made under S. 17 within the period specified in sub-section (1) of that section, *i. e. to say*, within 18 or 6 months from the date of establishment of the Board according as the Board was established before or after the coming into force of Bom. Act VIII of 1945. But if the case contemplated by sub-section (2) can be made out, sub-section (1) cannot be deemed to be applicable and consequently the debt in question cannot be held to have been extinguished.

(2) No application for recording the settlement of the debt must have been made under S. 23 within the period specified in sub-section (1) of that section *i. e.* within thirty days of the settlement having been effected.

Since such an application would lie only to the Board to which one under S. 17 would lie, the condition that there must be in existence at the time of the settlement a Board competent to entertain the latter kind of application as in the case of the first kind of default must be deemed to have been implied. Further if there is no such Board in existence at the date of the settlement but one is established within the period of thirty days from that date, the period of thirty days for the purpose of the application of this penal provision would have to be computed from the date of the establishment of the Board, by virtue of the provisions of S. 74 of this Act. Thus if a settlement has been effected 15 days before the establishment of a competent Board, the proper time for the filing of an application under S. 23 for recording it would be forty-five days from the date on which it was effected.

It should also be borne in mind while applying the provisions of this sub-section to any of the classes of cases above-mentioned that they would be applicable only if the total amount of the debts due by the debtor, on 1st January 1939 in the case of an application which lay to a Board established before the commencement of Bom. Act VIII of 1945 and on the date of the establishment of the Board concerned in the case of one which lay to a Board established after the commencement of the said Act, did not exceed Rs. 15,000 as provided in S. 26 of the Act.

(3) An application may have been made under S. 17 or S. 23 but it may have been withdrawn under S. 27 and no fresh application may have been made under S. 17.

(4) In a proceeding under an application for the adjustment of debts under S. 17 only the creditor to whom any of the debts may be due may have failed to file a statement as required by the provisions of S. 31, within the given time, although he may have been duly served with a notice. This was formerly condonable but now it is not.

It must be noted that in a case of the above category the debt due to the defaulting creditor only would be deemed to have been discharged. Those due to the other creditors, if any, of the debtor would remain unaffected thereby and therefore the investigation with regard to them would be proceeded with as provided in the subsequent sections.

*Sub-section (2):*—This sub-section is in the nature of a saving-clause which is applicable to the cases falling under the first category above-mentioned. It is to the effect that if the debtor concerned for whose benefit apparently the provision in sub-section (1) has been made, was himself guilty of a fraud consisting of his having led the creditor concerned to believe by his declaration, act or omission that he was not a debtor as defined in S. 2 (6) and that no application for the adjustment of his debts lay according to S. 26, the provision in sub-section (1) should not be put into operation in connection with the debt due to the defrauded creditor.

*Principle of estoppel in this sub-section:*—This sub-section embodies the well-known principle of estoppel contained in S. 115 of the *Indian Evidence Act, 1872*. The judicial decisions under it can therefore be made use of with due regard to the express words of this sub-section in order to ascertain their meaning and import. The elements which go to make the principle of estoppel applicable are:—

(1) The person concerned must have made a representation as to a certain fact either by an express declaration or by conduct consisting of an act or omission.

(2) The party seeking to take advantage of the principle must have believed that representation to be true and acted upon it under such a belief.

(3) The legal position of the party must have been affected thereby.

In the present case therefore the conditions which should be fulfilled in order to attract the provisions of this sub-section are :—

(1) The debtor must have made a representation to the creditor concerned either by an express declaration or by an act or omission that he was not a debtor under this Act and that no application for the adjustment of his debts lay to a Board, even though one may have been established for the local area in which the debtor ordinarily resides or for the class of debtors in any such area to which he belongs, owing to the total amount thereof being in excess of the maximum limit of Rs. 15,000 laid down in S. 26, (2) the creditor must have been led to believe such representation to be true and must have acted upon it, *i. e. to say*, refrained from making an application under S. 17 although he may have intended to do so, and (3) his having so refrained must have resulted in his being debarred from making any more application and the debt due to him being consequently liable to be deemed to have been discharged by the operation of sub-section (1).

It thus appears that the creditor concerned cannot take advantage of the provisions of sub-section (2) even if the first two conditions are fulfilled, if the occasion for doing so has arisen within the period fixed for making applications under S. 17.

*Significance of the word "and" in line 5 of this sub-section:—*

The above is the result of the literal construction of this sub-section. No question is likely to arise as to the third condition having been intended by the legislature to be fulfilled in every case. But it remains to be seriously considered whether it also intended that both the first conditions should also be fulfilled along with the third in each case in which a creditor claims exemption from the operation of sub-section (1) because there might arise a case in which a person may have represented that he was a debtor but that no application under S. 17 could be made for the adjustment of his debts because the



total amount of his liabilities on the relevant date exceeded Rs. 15,000 and yet the creditor to whom the representation may have been made cannot take advantage of the exception contained in this sub-section owing to the first condition not having been fulfilled. I believe the legislature must have such a case only in mind because if a person is not "a debtor for the purposes of this Act" no application under S. 17 is maintainable against him and therefore there is no possibility of his making a further representation as to the total amount of his liabilities on the relevant date being in excess of Rs. 15,000. Such an intention can also be inferred from the fact that under S. 35 (2) the Board is under an obligation to dismiss an application even if one of the conditions mentioned therein is fulfilled and those conditions are the same as mentioned herein. If such an inference is considered justified the word "and" in line 5 of this sub-section must be deemed to have been erroneously used in sense of the word "or". This of course means setting aside the literal construction of a sentence in a statutory provision and substituting for it another which is consistent with reason and common sense. It will however have to be done for the consequence of not doing so would be to refuse to give the benefit of this provision to the parties in whose cases the third and only one of the first two conditions is fulfilled.

*Significance of the word "omission" :—*The special significance of the occurrence of the word "omission" in this sub-section seems to be that even the failure of a debtor to make an application under S. 17 (1) may have the consequence laid down in this sub-section i. e. to raise an estoppel against him, if the other conditions laid down therein are fulfilled. But as stated above the whole the statutory period must have elapsed since the establishment of a competent Board for, if it has not, when the question arises, the creditor can himself make an application under S. 17 (2).

33. (1) Every debtor by or against whom on application is made under section 17 or who is a party to an application made under section 23 shall produce all books of accounts and shall give such inventories of his property

Duties of debtor to attend etc.



and such lists of his creditors and debtors and of the debts due to and from him, submit to such examination in respect of his property or his creditors, attend at such time before the Board and generally do all such things in relation to his property as may be required by the Board or as may be prescribed.

(2) It shall also be the duty of every creditor to produce such books of accounts, to submit to such examination and to supply such information in respect of the debt due to him by the debtor, as may be required by the Board or as may be prescribed.

### COMMENTARY

*Scope of the section* :—It may be recalled that S. 6 invests the Board with the power to decide all such questions as arise in the course of the proceedings before it and S. 7 invests it with the powers of a civil court when trying a suit under the provisions of the *Civil Procedure Code, 1908*. This section imposes a duty on the debtors and creditors who appear before a Board to obey such directions as it may give in order to effectually carry out the intention of the legislature as embodied in the remedial provisions of this Act which are those mainly contained in SS. 17 and 23.

*Sub-section (1)* :—The duties that this sub-section imposes on the debtor who is a party to an application made under S. 17 or S. 23, whether as an applicant or as an opponent, are :—(1) to produce all books of accounts, (2) to furnish such inventories of his property and such lists of his creditors and debtors and of the debts due and from him, (3) to submit to such examination in respect of his property or his creditors, (4) to attend at such times before the Board and (5) generally to do all such things in relation to his property, as may be required by the Board or as may be prescribed.

It must be borne in mind that the provisions as to the production of books can be made use of in the case of those debtors only who keep them, *i. e. to say*, that class of debtors, who though literate

have not sufficient capital on hand to carry on some side-occupation with their own money and are therefore required to borrow it from others and to become indebted to them for that reason. Such persons, if fulfilling the conditions laid down in SS. 2 (6) and 26, would get the benefit of this special legislation.

As regards inventories of property and lists of creditors and debts they are already required to be supplied according to the provisions of SS. 22 and 31. Still if any additional statements with respect thereto are required, they can be called for under this sub-section.

*Sub-section (2)* —The duties which this sub-section casts on every creditor of a debtor, whether already a party to an application under S. 17 or S. 23 or not, are :—(1) to produce such books of account, (2) to submit to such examination and (3) to supply such information in respect of the debt due to him by the debtor, as may be required by the Board or as may be prescribed.

With respect to this sub-section it must be noted that there is no reference in the marginal note to this section to the provision contained therein.

*Analogous law* :—The legal principles on which this section has been based are the same as those underlying the more formal and elaborate provisions of S. 30 and Orders X and XI in Sch. I to the *Civil Procedure Code, 1908*. They can however be referred to in case of doubt, only for enlightenment not for interpreting the provisions of this section, whose wording is quite different from that of any of them. Moreover this is a special Act enacted for a special purpose.

34. (1) The Board may also on the application of the debtor or any creditor summon before it in the manner prescribed any other person known or suspected to have in his possession any property belonging to the

The Board may summon any other person.

debtor or supposed to be indebted to the debtor, or any person whom the Board may deem capable of giving in-

formation in respect of the debtor, his dealings or property ; and the Board may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned refuses to come before the Board at the time appointed, or refuses to produce any document having no lawful impediment made known to the Board and allowed by it, the Board may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Board may examine any person so brought before it concerning the debtor and his dealings and property.

#### COMMENTARY

*Scope of the section* :—This section confers a further power on the Board to take steps to get the information or materials considered necessary in connection with proceedings under S. 17 or S. 23 and backs it up with a sanction. It has been sub-divided into 3 sub-sections out of which the first and third contain the provisions as to the power while the second contains an additional provisions to be utilised in case of disobedience.

*Sub-section (1)* :—By this sub-section the Board is empowered to issue a summons in a prescribed manner to (a) any person other than a creditor or debtor who may be known or may be suspected to have in his possession any property of the debtor or (b) such a person as may be supposed to be a debtor of the debtor before the Board or (c) such a person as the Board may consider capable of giving information in respect of the debtor personally of his dealings or his property.

*Sub-section (2)* :—The Board is hereby invested with power to issue a warrant for the arrest of any person who though duly summoned refuses to appear before the Board at the time stated in the summons or refuses to produce a document. The liability

to be arrested would not however be incurred if the person summoned is able to satisfy the Board that there was a lawful obstruction in the way of his complying with the requirement of the summons.

The verb 'refuses' used in this sub-section is somewhat vague because it would cover cases, in which the person summoned may not have appeared before the Board and orally declined to give evidence or to produce a document in his possession or power or may not have written a letter to the Board communicating his unwillingness to do so, and those in which the party at whose instance a summons may have been issued or a process-server who may have gone to serve it may have reported to the Board that the person had orally refused to do so within his hearing, although it may not be true. It would be advisable in such cases to proceed on taking an affidavit of the person to whom the alleged refusal may have become personally known.

*Sub-section (3):*—This sub-section enables the Board to examine any person brought before it by a summons or a warrant concerning the debtor personally and also concerning his dealings and his property.

*Analogous law:*—It seems that the legislature has not thought fit to extend specifically all the provisions in the *Civil Procedure Code* as to the powers of the civil courts in the matter of summoning and compelling the attendance of witnesses contained in SS. 30 (b), and 31 and 32 of, and Or. XVI in Sch. I to, that *Code*, to the proceedings under this Act but has by this section invested the Board with certain powers in that respect. The provisions therefore are analogous to some of those on similar points in the above parts of the *Code* and they and the rulings under them may, in case of doubt, be referred to with due regard to the difference in the wording of the two provisions and on bearing in mind the dictum that it is always dangerous to make use of the provisions of one Act in order to interpret another Act passed by a different legislature for quite a different purpose.<sup>1</sup> In order to assist the reader in making such use thereof as

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1. *Nippon Yusen v. Ramjiban* (A. I. R. 1938 P. C. 152, 158); *Kameshwar Singh v. Kulada Prasad* (A. I. R. 1935 Cal. 732); *Emperor v. Aftab Mohammad Khan* (A. I. R. 1940 All. 291).

is possible I give below a comparative table showing the corresponding portions of the two enactments and draw his attention to the principles set forth under the heading *Reference to subject* in the Commentary on S. 2.<sup>2</sup>

*This Act.*

*Civil Procedure Code.*

- |           |                                                                            |
|-----------|----------------------------------------------------------------------------|
| S. 34 (1) | S. 30 (b), S. 31 read with S. 27 and or. XVI rr. 1 and 8.                  |
| S. 34 (2) | Order XVI r. 10 (3), only so far as the issuing of a warrant is concerned. |
| S. 34 (3) | Order XVI r. 15.                                                           |

Preliminary  
issues. 35\*. (1) On the date fixed for the hearing of an application made under section 17, the Board shall decide the following points as preliminary issues :—

- (a) whether the person for the adjustment of whose debts the application has been made is a debtor ;
- (b) whether the total amount of debts claimed as being due from such person on 1st January 1939 does not exceed Rs. 15,000.

(2) If the Board finds that such person is not a debtor or that the total amount of his debts claimed as being due from such person on 1st January 1939, is more than Rs. 15,000 the Board shall dismiss the application forthwith :

Provided that before the application is so dismissed the creditors or any of them may remit any specific portion of their claim so as to reduce the total amount of the debts of all the creditors claimed as being due *\*from such person* on 1st January 1939 to a sum not exceeding Rs. 15,000.

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2. See pp. 33-34 *supra*.

In such case the Board shall not dismiss the application but shall proceed further with the same.

(3) The debts in respect of which such portion of the claim is remitted under sub-section (2) shall for all purposes be deemed to be extinguished.

(4) The finding of the Board on the preliminary issue that the total amount of the debts due by such person on 1st January 1939 does not exceed Rs. 15,000 shall not, subject to the proviso to sub-section (2), affect the power of the Board to make an award under section 24 or 54 for any sum exceeding Rs. 15,000.

*\*Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word "1st January 1939" wherever they occur the words "the date of establishment of the Board concerned" were substituted.*

## COMMENTARY

*Scope of the section :—*This section, imposes a special duty, on the Board to which an application under S. 17 has been made, to decide as preliminary issues the two points on which the maintainability of the application depends, and contains some subsidiary provisions.

This is the only section in the Act containing any reference to issues as such. It too does not make it strictly compulsory on the Board to frame all the issues arising from the application, statements filed by the parties, examination of parties &c., as Or. XIV in

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*\*The words from such person in the proviso to sub-section (2) were substituted for the words from them and the proviso to the section as a whole was added by S. 13 (i) and (ii) respectively of Bom. Act VIII of 1945.*

Sch. I to the *Civil Procedure Code, 1908* does, or even to frame the two preliminary issues mentioned in sub-section (1) but only to *decide the points* mentioned in them as *preliminary issues*. It thus relieves the Board of the formality in that respect, which is required to be observed by the civil courts in the case of suits, appeals &c. It would however be well-advised to do so in order that the parties may know what they have got to prove or disprove before the hearing is formally commenced.

*Sub-section (1)* :—The first duty of the Board after all the necessary materials have been brought before it in connection with an application for the adjustment of the debts of a debtor made, either by himself under S. 17 (1) or under it read with SS. 20 and 21, or by a creditor under S. 17 (2), is to decide as preliminary issues, *i.e.* as issues on the decision whereof the maintainability or otherwise of the application depends, the two points, namely :—(a) whether the alleged debtor is a debtor under this Act as defined in S. 2 (6) read together with its two explanations, S. 2 (5) read with S. 2 (8) and S. 2 (12) to (14), and (b) whether the total amount of his debts, as defined in S. 2 (5) read with S. 2 (12) to (14) did or did not exceed the maximum limit of Rs. 15,000 as calculated upto 1st January 1939, in the case of applications made to the Boards set up before the commencement of the Amending Act of 1945, and upto the date of establishment of the Board concerned in the case of those made to the other Boards, laid down by S. 26. The decision *i.e.* the findings on the points must be unequivocal. If there are any doubts on any of those points, they must be cleared up from the record or if necessary by a further investigation.

*Sub-section (2)* :—This sub-section makes it clear what would be the further duty of the Board if in any given case its finding on any of the two points is in the negative. That duty is to dismiss the application forthwith. It cannot however be over-emphasised that the negative findings must be definite and must have been arrived after thorough investigation made in accordance with the provisions contained in SS. 31, 33 and 34, in order to justify that drastic step which would deprive the applicant of the special remedy provided by this Act passed with the specific object adumbrated in its title and preamble.



*Appeal* :—It should be noted that S. 9 (1) has provided that an appeal shall lie against a decision of a Board under this sub-section ending in a dismissal of an application made under S. 17.

*Proviso* :—The said sub-section is subject to a proviso which is applicable in the case of a negative finding on the second point. According to it, it is open to the creditors or any of them concerned to reduce the amount of the claim by such an amount as would bring the case within the maximum limit above-mentioned even after such a finding is recorded and if they or any of them does so, the Board is not to dismiss the application but to proceed further with it.

*Sub-section (3)* :—The concession to reduce the amount of the claim while it saves the application from dismissal renders the remitted portion thereof irrecoverable and extinct for all practical purposes according to this sub-section. Hence, not only would a fresh application with respect thereto to the Board be barred but a suit to recover it would not also be maintainable in a civil court ; in other words the choice once made is final for all purposes.

*Analogous law* :—These are provisions similar to those contained in Or. II r. 2 (1) and (2) of Sch. I to the *Civil Procedure Code, 1908*. Although there is much difference between the wording of the two, which is due to that in the nature of the two enactments, the underlying principle, namely that a claim once voluntarily given up, even though it may be legally entertainable, must be deemed to have been given up for ever and for all purposes, is the same in both.

*Sub-section (4)* :—The provision in this sub-section only serves to clear up a possible doubt as to whether the Board after having once held that the total amount of debts due by a debtor on the relevant date did not exceed Rs. 15,000 can subsequently make an award under SS. 24, or 54 for an amount exceeding Rs. 15,000. It could have done that even if the sub-section were not there for the only limit imposed by S. 26 is as to the amount of debt due at the date mentioned therein not as to that found due on the date of the application or the award.



This is however to be understood to be subject to the proviso to sub-section (2). Hence if any portion of the claim had been deliberately given up in order to bring the application within the jurisdiction of the Board, the portion so given up cannot be taken into consideration at the time of making an award in spite of the maximum limit not being applicable to the amount due at the date thereof. That is so by virtue of the provision contained in sub-section (3) which has already been explained. This result can be avoided by giving up a portion of the claim as to interest only.

36\*. If an application made by a creditor under sub-section (2) of section 17 is dismissed under section 35 on the ground that the total amount of the debts claimed from a debtor as being due on 1st January 1939, is more than Rs. 15,000, the Board shall direct the amount of the court-fee paid by the creditor making the application to be refunded to the creditor.

*Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this section shall be construed as if for the figures, letters and word "1st January 1939" the words "the date of establishment of the Board concerned" were substituted.* Bom. VIII of 1945.

#### COMMENTARY

*Scope of the section :—*By this section the legislature has provided for granting an equitable relief in the shape of a refund of the court-fee paid by him to a creditor-applicant whose application is dismissed under S. 35 (2). It would have been a great hardship if it had not done so because the application would be dismissed under that provision only if the total amount of debt due by the applicant's debtor exceeded Rs. 15,000 on the relevant date, which fact may not be known to the applicant when he may have made the appli-

\*This proviso was added by S. 14 of Bom. Act. VIII of 1945.

cation but may be revealed after notice as required by S. 31 is served on other creditors of the debtor and published in the prescribed manner and statements are filed before the Board as required by the notice.

*Remedy of the creditor whose application is dismissed under S. 35 (2):*—It has already been stated in the Commentary on S. 35 (2) that an appeal would lie against the decision of the Board consisting of a negative finding on any of the points mentioned in S. 35 (1). It seems that he would have an additional remedy also, namely a regular suit for the recovery of his claim because it must have been held not cognizable by the Board and such a claim would fall under S. 86 (a). It must however be remembered that this is a remedial Act and that an appeal against a decision of the above nature has been provided for by S. 9 (1). It is therefore a point for consideration whether a suit with respect to the claim can be resorted to before the remedy of appeal is exhausted, for when a statute creates a right not existing at common law and provides a remedy for its enforcement, that remedy must be exhausted before the common law right can be exercised.<sup>1</sup> A reference to S. 14 of this Act, which prohibits a second appeal against a decision or award of the Board, shows that it does not touch the common law right to file a suit in a civil court for the enforcement of a claim held not cognizable by a Board.

The observations of Willes J. in his judgment in *Wolverhampton New Waterworks Co. v. Hawkesford*<sup>2</sup> are worth quoting here as they are likely to be of assistance in arriving at a decision in case of a doubt. They are:—‘There are three classes of cases in which a

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1. *Chunilal v. Ahmedabad Municipality* (I. L. R. 36 Bom. 47) in which the above dictum of Willes J. in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 C. B. N. S. 336, 356 has been relied on; *Joti Prasad v. Amba Prasad* (A. I. R. 1933 All. 358), a case under the *U. P. District Boards Act, 1922* (X of 1922), held to be a self-contained Act, in which the ruling in *Abdul Rahman v. Abdul Rahman* (A. I. R. 1925 All. 380 = I. L. R. 47 All. 513 F. B.) was relied on.

2. (1859) 6 C. B. N. S. 336, 356.

liability may be established founded upon a statute. One is where there was a liability existing at common law and that liability is affirmed by a statute, which gives a special and peculiar form of remedy different from the remedy which existed at common law; there unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is where the statute gives the right to sue merely but provides no particular form of remedy; there the party can only proceed by action at common law. But there is a third class viz:—where a liability not existing at common law is created by a statute which at the same time gives a special and peculiar remedy for enforcing it. The present case falls within this last class if any liability at all exists. The remedy provided by the statute must be followed and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to x. . x. x. . .”

37\*. *All suits, applications for execution and proceedings for the recovery of any debt against a person pending at any time in any civil or revenue court shall, if they involve the questions whether such person is a debtor under this Act and whether the total amount of debts due from him on the relevant date does not exceed Rs. 15,000, be transferred to the Board to which an application for adjustment of the debts of such person under section 17 lies.*

*Explanation :— In this sub-section the “relevant date” means the 1st January 1939 in relation to Bom. VIII of 1945. Boards established before the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, comes into force, and the date of establishment of the Board concerned in relation to other Boards.*

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\* This section has been substituted by S. 15 of Bom. Act VIII of 1945 for the original which was as follows:—

(2) When an application for adjustment of debts made to a Board under section 17 or a statement submitted to a Board under section 31 includes a debt in respect of which a suit, application for execution or proceeding is pending before a civil or revenue court, the Board shall give notice thereof to such court in the prescribed manner. On the receipt of such notice, the court shall transfer the suit, application or proceeding as the case may be, to the Board.

(3) When any suit, application or proceeding is transferred to the Board under sub-section (1) or sub-section (2), the Board shall proceed as if an application under section 17 had been made to it.

(4) If the Board, to which any suit, application or proceeding is transferred under sub-section (1) or sub-section (2), decides the preliminary issues mentioned in sub-section (1) of section 35 in the negative, it shall retransfer the suit, application or proceeding to the court from which it had been transferred to the Board, after the disposal and subject to the result of the appeal where an appeal is filed, and after the expiry of the period prescribed in section 10 for an appeal where no appeal is filed.

37. All pending suits and applications for execution before any civil court in which the question involved is the recovery of any debt from a person who is a debtor under this Act and all proceedings arising in or out of such suits or applications, if such person ordinarily resides in any local area for which a Board is established under section 4 or belongs to a class of debtors for which a Board is established under the said section shall, if the total amount of debts due from such debtor is not more than Rs. 15,000, be transferred to the Board to which an application for adjustment of debts of such person under section 17 lies. The decision of the court on the points whether such person is a debtor under this Act and whether such amount of his debts is not more than Rs. 15,000 shall be final.

No such transfer shall be made unless notice is given to all the parties to such suit or application.

*(5) When any suit, application or proceeding is retransferred to the court under sub-section (4), the court shall proceed with the same and the Board shall have no further jurisdiction in respect thereof.*

## COMMENTARY

*This section, as it now is and as it originally was:--* This section as substituted by S. 15 of the Amending Act of 1945 has been printed above in italics throughout. That which has been substituted has been printed in small types in the foot-note. Even a cursory glance at the two will make it clear that the latter was originally in two paragraphs and the former is sub-divided into 5 sub-sections. The substantial provision in the original section was contained in paragraph 1 thereof. That paragraph again was made up of two sentences and it was the first of them only which contained the provision, the second merely declaring that the action taken by the court referred to in the first must be deemed to be conclusive. The second paragraph contained only a rule of procedure, namely that action should be taken under the first sentence of the first paragraph only after giving notice to the parties to the suit or application. That being so, it was only the first sentence of the first paragraph thereof that must be considered for the purpose of comparison and contrast with the corresponding part of the section that has been substituted. That part consists of sub-sections (1) and (2) of that section. Thereout again, sub-section (2) contains an entirely new matter, namely the transfer of a suit, application or proceeding for the recovery of a debt by the court in which it is pending to a Board on receipt of a notice from the latter in the prescribed manner stating that an application made to it under S. 17 contains a statement that the particular suit, application or proceeding is pending in that court or that the debt to which the particular suit, application or proceeding relates has been shown in a statement filed before the Board under S. 31 in a particular proceeding. The sub-section has been so worded that the Court has not to apply its mind at all to the question of the propriety or otherwise of the transfer of

the suit, application or proceeding to the Board giving the notice but has simply to transfer it. Such being the case, sub-section (1) alone remains to be compared with the first sentence of paragraph 1 of the original section. That being done it appears that the original and the present provisions as to the *transfer* by a court of a matter pending before it *of its own motion*, as opposed to *transfer of one on receipt of a notice from a Board* (dealt with by sub-section 2) differ in several material particulars. They are:—

*Sub-section (1) of the present section.*

(1) Applicable to all pending suits, applications for execution and proceedings of whatever other nature, whether arising from the pending suits and applications for execution or not:—

(2) All civil and revenue courts' work affected.

(3) The suit application or proceeding must be (1) for the recovery of a debt from a person and (2) involving the questions whether the person against whom the same is pending is (a) a debtor under this Act and (b) the total amount of debts due from him on the relevant date, as defined in the explanation to sub-section (1), was Rs. 15,000.

(4) Though the civil or revenue Court concerned is still left free to decide, so long as it has not received

*First sentence of the first paragraph of the old section.*

(1) Applicable to pending suits and applications for execution and all proceedings arising in or out of such suits or applications only.

(2) The work of the civil courts only affected.

(3) The pending suit and application and incidental proceeding, if any, was required to be involving the question of the recovery of a debt from a person who was a debtor under this Act and it was required to be transferred to a Board only if (1) the person was ordinarily residing within the area for which the Board was established or belonged to the class of persons for which a Board was established and (2) the total amount of debt due from such debtor [upto a date not specified but held to be 1-1-39 by Lokur J. in *Rango v. Narayan* (43 Bom. L. R. 437) was Rs. 15,000.

a notice from a Board under sub-section (2), whether (1) the suit, application, or proceeding relates to the recovery of a debt from a person and (2) whether the questions of status of the person as a debtor under this Act and of his total liability upto the relevant date are involved therein, the section nowhere says that decision of the court on those points shall be final.

(4) The decision of the civil court on the two points above mentioned was declared to be final.

*Nature of the provisions of this section:*—This is an important section ousting the jurisdiction of the civil and revenue courts to continue to proceed with certain matters pending before them. The principles governing such provisions deduced from judicial decisions have already been given in the Commentary on S. 17 under the heading *Special Tribunals and the Civil Courts*. As a rule such legislation is not given retrospective effect so as to affect suits and proceedings falling within its purview but instituted before its coming into operation.<sup>1</sup> But there is no legal prohibition against doing so, and the only legal requirement is that the provision as to ouster of jurisdiction should be in express terms. The Legislature of this Province has thought it expedient to provide expressly in sub-section (1) of this section that if the two conditions laid down in that sub-section are fulfilled, all the civil and revenue courts in the Province will have to transfer all pending suits, applications for execution and proceedings to the respective Boards established under S. 4 of this Act to which applications for the adjustment of the debts

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1. *Gujarat Trading Co., Ltd. v. Trikamji Velji* (3 Bom. H. C. R., O. C. J; 45); *Durgapada v. Nrisingha* (A. J. R. 1935 Cal. 541); *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630 F. B.); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013 (2)]; *Asikunnissa Bibi v. Dwijendra Krishna* (A. I. R. 1931 Cal. 32); *Pramatha Nath v. Mohini Mohan* (I. L. R. 47 Cal. 1108); *Alley Rasul Ali v. Balkisan* (A. I. R. 1934 All. 709); *Abdul Rahim v. Syed Abu Mahomad* (A. I. R. 1928 P. C. 16=30 Bom. L. R. 774 P. C.); *Prabhakar v. Khanderao* (10 Bom. L. R. 625).

of the debtors concerned under S. 17 lie. The fact whether those conditions are or are not fulfilled in a given case will have to be determined by the courts in which the suits, etc. are pending. Those conditions are:—(1) whether the suit, application or proceeding is for the recovery of any debt due from a person and (2) whether it involves the questions whether such a person is a debtor under this Act and whether the total amount of the debts due from him on the relevant date did or did not exceed Rs. 15,000. The courts themselves have not to determine the said questions but only the fact whether the suit, application or proceeding involves the determination of those questions. The occasions for the exercise of the power to determine whether the said two conditions are or are not fulfilled are likely to be rare because subsection (2) of this section provides that when an application for adjustment of debts made to a Board under S. 17 or a statement submitted to a Board under S. 31 includes a debt in respect of which a suit, application for execution or proceeding is pending before a civil or revenue court, the Board shall give notice thereof to such court in a prescribed form and that on the receipt of such notice the court shall transfer the suit, application for execution or proceeding, as the case may be, to the Board.

As the provisions of these two sub-sections have the effect of depriving a party of his vested right to get a suit, application for execution or proceeding decided by the court which lawfully entertained it they must be construed strictly. Any difficulty that may be felt in construing them can be tided over by the application of any of the following rules which have been deduced from the decided cases in which the courts deciding them had occasions to discharge a similar duty.

*Rules as to giving retrospective effect to statutes:—*(1) There is a legal presumption that every statute is generally prospective in its operation.<sup>2</sup> This means that every Act is to be read as speaking

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2. *Parashram v. Emperor* (A. I. R. 1931 Lah. 145) referring to *Midland Railway v. Pye* (10 C. B. N. S. 179); and *Attorney-General v. Sillem* (1884) 2 H. and C. 431; *Saligram v. Emperor* (A. I. R. 1943 All. 27, 42); *Shatrughna Singh v. Kedarnath* (A. I. R. 1944 All. 126, 130), a case under the *U. P. Debt Redemption Act*, (U. P. Act XIII of 1940); *Brijendralal Murbeswar Ali* (A. I. R. 1944 Cal. 426, 427).



in the present, *i. e.*, as speaking on the date on which it is to be applied and does not therefore affect acts done or rights accrued under the previous state of the law except when there are express words to the contrary or when such a provision can be deemed to have been necessarily implied by the language of any particular provision,<sup>3</sup> which has the same force as an express provision.<sup>4</sup>

(2) When it is said that the laws of procedure or that the provisions of adjective law are an exception to the above rule,<sup>5</sup> what is meant is that the legislatures as a rule give retrospective effect to such legislation. The necessity for the manifestation of such an intention in every such enactment either by express words or by necessary implication cannot be dispensed with even in the case of such laws.<sup>6</sup>

(3) Statutes interfering with vested rights should be construed strictly, *i. e.* to say, no greater retrospective effect should be given to

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3. *Suryamal v. Sriram* (A. I. R. 1939 Pat. 158, 160); *Hayatuddin v. Mt. Rahiman* (A. I. R. 1935 Sind. 73, 75); *Martand v. Narayan* (A. I. R. 1939 Bom. 305, 307. F. B.); *Mt. Lahani v. Bala* (A. I. R. 1922 Nag. 227); *Nepra v. Sayar Pramanik* (I. L. R. 55 Cal. 67); *Gulam Daud Khan v. Habibullah Khan* (A. I. R. 1936 Pesh. 125); *Shakuntala Devi v. Kausalya Devi* (A. I. R. 1936 Lah. 124); *Haidor Haseein v. Puraan Mal* (A. I. R. 1935 All. 706 F. B.) *Sadhu Saran v. Deonath Sudan* (A. I. R. 1943 Pat. 208, 209).

4. *Swaminath Iyer v. Ramnath Iyer* (A. I. R. 1943 Mad. 573, 579); *Nandlal v. Askaran* (A. I. R. 1944 Cal. 310, 312); *Jagannath v. Madan Mohan* (A. I. R. 1942 Cal. 125, 126); *Prasanna Dev v. Biseswar Dass* (A. I. R. 1944 Cal. 46, 48); *Sarat Chandra v. Santosh Kumar* (A. I. R. 1944 Cal. 145, 151).

5. *Gopalswami v. Secretary of State* (A. I. R. 1933 Mad. 748); *Gangaram v. Punamchand* (I. L. R. 21 Bom. 822); *Shib Narain v. Lachmi Narain* (A. I. R. 1929 Lah. 761); *Sidhu Ram v. Nur Mohammad* (A. I. R. 1937 Lah. 506); *L. Liag Ram v. Har Prasad* (A. I. R. 1934 All. 253); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013 (2)]; *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299).

6. *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18), wherein it is said that the exception applies even to a part of an Act dealing with a matter of procedure; *Vishvanath v. Harihar* (A. I. R. 1939 Pat. 90), a case under the *Bihar Money-lender's Act* (Bihar Act III of 1938); *Vemanna v. Sanjiva Reddi* (A. I. R. 1942 Mad. 475, 477); *Srikanth v. Emperor* (A. I. R. 1943 Bom. 169, 172).

their provisions than is absolutely necessary according to its plain wording.<sup>7</sup> There is no presumption as to the retrospectiveness of a provision which is likely to affect vested rights.<sup>8</sup>

(4) When in such a statute there is an ambiguity a presumption arises out of respect for the legislature against its intention to interfere with such a right, whether it is acquired under a statute<sup>9</sup> or under a judgment based upon it.<sup>10</sup>

*Explanation 1* :—Remedial rights of action and appeal are vested rights and therefore the above rule holds good in their case.<sup>11</sup>

*Explanation 2* :—A status such as that of an agriculturist according to the definition given in a particular statute is not a vested right and therefore if the statute is amended while a suit based upon it is pending in a court, that suit must be decided according to the law as amended.<sup>12</sup>

*Explanation 3* :—An amendment of the law which only changes the forum but does not take away the right to institute a proceeding

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7. *Girdhari Lal Son & Co. v. K. Gowder* (A. I. R. 1938 Mad. 688, 700); *Collector of Broach v. Oochavilal* (A. I. R. 1941 Bom. 158, 159); *Bireswar v. Indu Bhushan* (A. I. R. 1943 Cal. 573, 574); *Shibnath v. Porter* (A. I. R. 1943 Cal. 377, 390).

8. *Musamat Rupi v. Sadasheo* (A. I. R. 1925 Nag. 190); *Kanak Kanti Roy v. Kripanath* (A. I. R. 1931 Cal. 321); *Shiya Janaki v. Kirtanand* (A. I. R. 1936 Pat. 173); *Bepin Chandra v. Mahim Chandra* (A. I. R. 1940 Cal. 345); *Secretary of State v. Bank of India Ltd.* (A. I. R. 1938 P. C. 191); *Bombay Namdeo Co-operative Agency Ltd. v. Virbhaval* (A. I. R. 1937 Bom. 266, 271).

9. *Tularam v. Teji Lal* (A. I. R. 1942 Nag. 49, 50).

10. *Municipal Board, Fyzabad v. Musamat Vidyadhari* (22 Cr. L. J. 638).

11. *Laxmanrao v. Balkrishna* (I. L. R. 36 Bom. 617); *Zamindara Bank v. Suba* (A. I. R. 1924 Lah. 418); *Penniselvam v. Verriah Vandayar* (A. I. R. 1931 Mad. 83); *Sripati Charan v. Kailash Chandra* (A. I. R. 1936 Cal. 331, 334); *Shantiniketan Housing Society Ltd. v. Madhavilal* (A. I. R. 1936 Bom. 37).

12. *Rama Krishna v. Subbarayya* (I. L. R. 38 Mad. 101); *Fatma Bibi v. Ganesh* (I. L. R. 30 Bom. 630); *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* [A. I. R. 1934 Lah. 1013 (2)]; *Pramatha Nath v. Mohini Mohan* (I. L. R. 47 Cal. 1108).

or one which changes the period of limitation for instituting an action relates to procedure only and has retrospective effect.<sup>13</sup>

(5) Discretionary powers given by a statute to a public body must be exercised by it in strict conformity with private rights.<sup>14</sup> The same rule applies also to acts of private persons permitted by a statute.<sup>15</sup>

(6) Declaratory statutes, *i. e. to say*, statutes which declare or create private rights, are generally retrospective in their operation<sup>16</sup> but there too clear expression or necessary implication must be there as evidence of the intention of the legislature to give them such an effect.<sup>17</sup>

(7) Acts which are merely interpretative and are introduced merely with a view to settle doubts as to titles are presumed not to take away existing rights.<sup>18</sup>

A very comprehensive and clear-cut statement of the law on this subject is found in the judgment of the Full Bench of the Patna High Court in *Banwari Gope v. Emperor*.<sup>19</sup>

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13. *Padgaya v. Baji Babaji* (I. L. R. 11 Bom. 469).

14. *Gokul Prasad v. Govind Rao* (A. I. R. 1929 Nag. 282); *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299 F. B.).

15. *A. B. Moola v. Commissioner of the Port of Rangoon* (A. I. R. 1931 Rang. 95); *Baijnath Prasad v. Umeshwar Singh* (A. I. R. 1937 Pat. 550); *Amba Prasad v. Jugal Kishore* (A. I. R. 1936 All. 112); *Municipal Board, Benares v. Jokhum* (A. I. R. 1939 All. 384).

16. *Faiyaz Hussein v. Municipal Board, Auroha* (A. I. R. 1939 All. 280).

17. *Debendra Narain v. Jogendra Narain* (A. I. R. 1936 Cal. 393); But see *Musamat Rashid Bibi v. Tufail Muhammad* (A. I. R. 1941 Lah. 291, 292), a case under the *Dissolution of Muslim Marriages Act, 1939*. This Act was therein held not to be retrospective in its operation and S. 4 thereof was held not applicable to a suit instituted before the said Act came into operation. The contrary decision was however given by another Judge of the Court in the case of *Musamat Fazal Begum v. Hakim Ali* (A. I. R. 1941 Lah. 22, 23).

18. *Ram Saran v. Bal Kisan* (A. I. R. 1940 Nag. 303), a case under the *C. P. and Berar Money-lenders Act, 1939*.

19. A. I. R. 1943 Pat. 206, 209.

(8) Clear words are necessary in order that an Act passed while a suit is pending can be held to be applicable to such a suit.<sup>20</sup>

(9) If one section of an Act is made expressly retrospective, it does not necessarily follow from it that the others are non-retrospective.<sup>21</sup>

(10) Even though an amending Act changes the law with retrospective effect that is not a sufficient ground for re-opening matters which have already been decided under the law as it stood before the amendment.<sup>22</sup>

In order that the full meaning and implication of the provisions of this section as it now stands may be before those who have to deal with this section and if necessary to apply the rules of interpretation above given, I now consider the wording of each sub-section thereof separately.

*Sub-section (1)* :—As already explained this sub-section casts a duty on the civil or revenue court in which a suit, application for execution or proceeding for the recovery of any debt due from a person is pending at any time, to transfer it to the Board to which an application for the adjustment of the debts of such person under section 17 lies, if such suit, application for execution or proceeding involves the questions whether such a person is a debtor under this Act and whether the total amount of debts due from him on the relevant date did not exceed Rs. 15,000.

The word “person” now definitely includes an undivided Hindu family according to the newly-added sub-section (8-A) of S. 2. The word “debt” has been defined in S. 2 (5) and that definition may, if necessary, be read along with those of “secured debt” and “unsecured debt” con-

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20. *Firoze Ahmed v. Akbar Ali* (A. I. R. 1943 Lah. 238, 239); *Sham Singh v. Virbhan* (A. I. R. 1942 Lah. 102, 104); *Musamat Rashid Bibi v. Tufail Muhammad* (A. I. R. 1941 Lah. 291, 292); *People's Bank v. Wahid Bux* (A. I. R. 1943 Lah. 170, 172).

21. *Kewati v. Chiranjī Lal* (A. I. R. 1944 Lah. 29, 30-32); *Shamsuddin v. Haider Ali* (A. I. R. 1945 Cal. 194, 196).

22. *In re Vasudevan* (A. I. R. 1944 Mad. 238, 239).

tained in S. 2 (12) and (14) respectively. The term "relevant date" has been defined in the *Explanation* to this sub-section as 1st January 1939 in relation to the Boards established before the commencement of the operation of the Amending Act of 1945 and the date of establishment of the Board concerned in relation to those established or to be established thereafter.

It has further been explained clearly what points the court concerned is left free to decide before coming to a conclusion one way or the other as to whether the suit, application or proceeding is or is not liable to be transferred to a competent Board. One point however remains to be brought into prominence clearly and that is that this section does not now contain a declaration that the decision of the court on those points is final. Nevertheless that being the decision, of a *court*, not a *Board*, and appeals against the decisions of the Boards too being confined to the two specific cases mentioned in S. 9 (1), no appeal would lie to the District Court against it under this Act at least. Nor would any revision application against it be entertainable by the District Court because there is no specific provision for it anywhere in this Act. But such an application must be held to lie to the High Court under S. 115 of the *Civil Procedure Code, 1908* it being the decision of a civil court under this section as it stands, because one was held to lie even when a civil court's decision under it had been declared to be final.<sup>23</sup> In the case of such a decision being of a revenue court an appeal would lie to the Collector under S. 203 of the *Bom. Land Revenue Code, 1879*.

It should be noted that the wording of this sub-section does not involve the transfer of a suit for the possession of an immovable property pending before a Mamlatdar or a civil court.<sup>24</sup>

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23. See the ruling of Wadia and Rajadhyaksha JJ. in *Pandurangrao v. Sheshadasacharya* (46 Bom. L. R. 711).

24. See the ruling of Sir J. Beaumont C. J. *In re. Reference under Or. 46 r. 1. C. P. Code* (45 Bom. L. R. 445), which is still good law as the condition as to the suit, application or proceeding being "for the recovery of a debt" is still there in S. 37 (1). The expression "for the recovery of a debt" has been judicially interpreted therein.

*The word "court" in this sub-section:—*According to the definition of the word "court" given in S. 2 (4) (b) it means in this section "the civil court of competent jurisdiction" and therefore includes the District Courts and the High Court.

*For the meaning of the word "proceedings" in this sub-section see the notes under the sub-heading "non-technical" under the main heading "Construction of words not defined, etc." in the Commentary on S. 2 (16).*

*Sub-section (2):—*As stated already this sub-section confers quite a new power on the Boards set up under this Act. It can be exercised as well by the old ones as the new ones. That power is to issue a notice to a civil or revenue court in the prescribed manner. Once a notice is received by the Court concerned, it has no powers to determine whether or not to transfer a suit, application or proceeding pending before it to the Board issuing the notice. It has simply to transfer it. The Board is however under an obligation under the sub-section to satisfy itself before exercising that power that there is on its record either an application made under S. 17 containing a statement to the effect that a particular suit, application for execution or any other proceeding for the recovery of a particular debt from a particular person who is a party to the application made to the Board is pending in a particular civil or revenue court or that there is a statement filed in any matter under S. 31 showing the particular debt to which the suit, application or proceeding pending in the civil or revenue court relates.

*Sub-section (3):—*This sub-section fills up only a lacuna which existed in the original section. It is now clearly provided thereby that after a suit, application for execution or proceeding has been transferred to a Board under sub-section (1) or sub-section (2), the Board should proceed, as if an application for the adjustment of the debts of the person had been made to it under S. 17.

*Sub-section (4)* :— Now it might happen that the Board may come to negative findings on the preliminary points mentioned S. 35 (1) in the transferred suit, application for execution or proceeding. For such a contingency this sub-section provides that the Board shall re-transfer the suit, application for execution or proceeding to the civil or revenue court which had transferred it to the Board, not however immediately on recording its findings but in every case after the time for appealing against the decision fixed by S. 10 has expired and if an appeal is filed during that period, then subject to the result of the appeal. This means that if the Appellate Court reverses the decision and holds that the Board has jurisdiction to proceed with the adjustment of the debts of the debtor concerned, then the Board need not re-transfer the suit, application for execution or proceeding but must proceed further under sub-section (3), while if on the other hand that Court confirms the Board's decision, the latter must re-transfer the matter as provided in this sub-section, on coming to know of the confirmation of its decision.

*Sub-Section (5)* :—This sub-section defines the effect of the re-transfer if and when made. It is that the Board ceases thereafter to have jurisdiction in the matter and that the court concerned re-acquires jurisdiction therein and must therefore proceed with it as if no such transfer and re-transfer thereof had taken place.

38\*. If the Board finds the person making the application under sub-section (1) of section 17 or the person against whom an application is made under sub-section (2) of section 17 to be a person—

Taking of accounts.

- (a) who is a debtor, and
- (b) the total amount of debts claimed as being due from whom on 1st January 1939 is not more than Rs. 15,000,

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\* The proviso to this section was added by S. 16 of Bom. Act VIII of 1945.

the Board shall proceed to take accounts in the manner hereafter provided and determine the amount due to each of the creditors at the date of the application made under section 17 for the adjustment of debts.

*Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this Bom. VIII of 1945 section shall be construed as if for the figures, letters and word '1st January 1939' the words 'the date of establishment of the Board concerned' were substituted.*

### COMMENTARY

*Scope of the section:*—The decision of the Board on the two points mentioned in S. 35 (1) can either be one justifying the entertainment of the application under S. 17 or one not justifying it. Sub-section (2) of that very section has provided what the Board should do in the case of its having arrived at the latter kind of decision. This section lays down what it should do if the decision is of the former kind. The provision consists of a direction to take accounts of the debts of the debtor according to the special mode provided for in the succeeding 8 sections and ascertain the exact amount due from the debtor to each of the creditors upto the date of the application. It must be noted that for the purpose of determining the question of jurisdiction of the Board, the maximum total amount of debts due from a debtor is to be ascertained with reference to 1st January 1939 in the case of the debtors before the Boards established before the coming into force of Bom. Act VIII of 1945 and the date of establishment of the Board concerned in the case of the debtors before the Boards established thereafter, according to SS. 26 and 35 but that while making up accounts for the purpose of determining the amount due to each creditor of the debtor under this section his liability is required to be ascertained with reference to the date of the application. It would not matter if the total



amount of liabilities of a debtor at that date amounts to more than Rs. 15,000.

39. In an application for the adjustment of debts if the amount of the creditor's claim is disputed, the Board shall, when taking accounts, examine both the creditor and the debtor as witnesses, unless for reasons to be recorded by it in writing, it deems it unnecessary so to do.

### COMMENTARY

*Scope of the section*:—The duty of the Board after it has come to the conclusion that the application for the adjustment of the debts of a debtor before it, whether as an applicant or an opponent, lies, is to proceed to take accounts in the manner provided for in SS. 39 to 46 as directed in S. 38 and the first step towards it is an examination of the parties as witnesses under S. 39 if the creditor's claim is disputed. This duty is not avoidable in a disputed case except when there are good reasons for doing so. In case the examination of parties is dispensed with, the reasons for doing so must be recorded in writing.

*Investigation as to disputed claims*:—The clause "If the amount of the creditor's claim is disputed" implies that if the amount of a creditor's claim is not disputed the Board would not be bound to examine the parties. From the fact that it is not stated clearly in this clause whether the claim should not be disputed by the debtor or even by any other creditor of the debtor, it appears that an examination of the parties cannot be dispensed with, except for reasons to be recorded, even if the amount claimed by one creditor of the debtor is disputed by another creditor of the debtor.

*Marginal-note to this section*:—The marginal-note to this section is faulty because whereas the section requires an examination of both the creditor and the debtor the note says "Examination of creditor or debtor." It is not therefore a reliable guide to the provision contained in the section.

*Analogous law*:—This provision is similar to the one contained in the first part of paragraph 1 of S. 12 of the *Deccan Agriculturists Relief Act, 1879* which, so far as cases falling under this Act are concerned, is repealed by S. 85 thereof with effect from its coming into operation in any particular area. The only points of distinction between the wording of the two are:—(1) that in the place of the words “In any suit of the description mentioned in section 3, clause (w) in which the defendant or any of the defendants is an agriculturist and in any suit of the descriptions mentioned in section (3), clause (y) or clause (z)” in the said section of the old Act, there are the words “In an application for the adjustment of debts,” in the present section; (2) that instead of the words “the Court” in the former there are the words “the Board” in the latter; (3) that there are no words in the former corresponding to the words “when taking accounts” in the latter, and (4) that in place of the words “the plaintiff and the defendant” in the former, there are the words “the creditor and the debtor” in the latter. The first point of distinction is due to the nature of the proceeding in the course of which the question of examination of the parties arises, the second point is due to the nature of the tribunal seized of that proceeding and the fourth is also due to the difference in the nature of the proceeding before the two kinds of tribunals. Hence all these three points relate to unimportant formal matters. The third point of distinction too does not make any important difference between the nature of the two provisions because although the words “while taking accounts” are not found in S. 12 of the *D. A. R. Act*, the said section had been enacted only with a view to lay down a specific method of taking accounts in particular classes of suits. It seems therefore that it is an enactment in *pari materia* with that contained in S. 39 of this Act and therefore the rules deduced as to making use of *Other Acts in pari materia* and the judicial decisions made thereunder and those deduced as to making use of the *Previous history of the law* given in the Commentary on S. 2 under the main heading *Reference to subject*<sup>1</sup> may with profit be referred to in case of doubt as to the meaning of any parti-

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1. See pp. 34-36 *supra*.

cular portion of this section which is common to both the enactments.

40. The Board shall inquire into the history and merits of the case from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the claim has arisen :

Board to inquire into history and merits.

Provided that where transactions between the parties have commenced more than 20 years before the coming into force of this Act, any settlement of accounts which has been last arrived at between the parties before the said 20 years and which is in writing and bears the signature of the debtor or the person through whom the liability is derived shall be accepted as binding between the parties and no inquiry into the history and merits of the case shall be made prior to the date of such settlement.

#### COMMENTARY

*Scope of the section* :—This section casts a duty upon the Board to inquire into the history and merits of the case from the commencement of the transactions between the parties and the persons (if any) through whom they claim, out of which the claim has arisen, subject to the proviso that if transactions between the parties had commenced more than 20 years prior to the coming into force of this Act, and if a settlement had been last arrived at before the said period of 20 years and is in writing signed by the debtor or by the person through whom he had derived his liability, the Board should take that settlement as binding on the parties and should not make an inquiry into the history and merits of the case prior to the date of such settlement.

*Proviso* :—It will appear from the above that in order that the Board may be justified under the proviso in not pursuing an inquiry as required by this section beyond the date of a settlement

relied on by a creditor or debtor the following conditions must be fulfilled, namely :—

(1) transactions must have commenced between the parties more than 20 years prior to the date of coming into force of this Act;

(2) the alleged settlement of accounts must have been arrived at prior to the said period of 20 years;

(3) the alleged settlement must be in writing and must have been signed either, by the debtor before the Board, or by the person, if any, through whom the debtor may have derived his liability for the debt alleged to have been settled.

*Analogous law*:—The provision in this section is slightly similar to that contained in the second part of paragraph 1 of S. 12 of the *Deccan Agriculturists Relief Act, 1879*. I say that the similarity between the provisions in the two Acts is slight and emphasise the difference between them because the points of distinction between them are important. They are:—

(1) Whereas under the said section of the *D. A. R. Act* an inquiry into the history and merits of the case from the commencement of dealings between the parties and the persons (if any) through whom they or any of them claims, is directed to be made with two specific objects in view, namely:—(1) that of ascertaining whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise and (2) that of taking an account between the parties in the manner therein-provided, this section does not require the Board to keep any of those objects particularly in view, although of course, there can be no gainsaying the fact that the inquiry under it is to be made with the same object as No. 2 in the said section of the *D. A. R. Act*. That object is however the ultimate one under the *D. A. R. Act* while it is the only one under this Act. Therefore an attempt on the part of the Board to start with a suspicion against the creditor and to make out a defence for the agriculturist debtor in case he happens to be an opponent in the application or to find out a ground of attack for him if he happens to be

the applicant, would not at all be justified. This change of attitude towards the money-lending class on the part of the legislature seems to have been the result of the finding of *The Dekkan Agriculturists Relief Act Commission* in its Report of 1912 that the operation of the *D. A. R. Act* has taught the agriculturist to repudiate his obligations and that now it is often the Sowcar who wants protection from the legislature.<sup>1</sup>

(2) Another very important point of distinction between the two enactments is that S. 12 of the *D. A. R. Act* does not lay down any limit to the period upto which the inquiry should be pressed backwards and consequently in several cases in which the transactions between the parties or between those through whom they claim extend over a long period broken up at places by alleged settlements, it becomes a very contentious issue as to when the dealings between the parties out of which the liability has arisen, should be deemed to have commenced and the creditor concerned has to suffer at times because although his available book may be showing that an amount has been brought forward from a previous book, that book may not be in his possession or under his control. The proviso to this section, by dispensing with the necessity to pursue the inquiry, directed by the section to be made, beyond the date of an alleged settlement, if the conditions as above-explained are fulfilled in its case, has, on the one hand, put an end to the possibility of such an issue being raised, in several cases and on the other, extended a much-needed protection to the creditor-class by relieving it of the necessity to find evidence of a fact which may be beyond its reach or even beyond its knowledge. The limit of 20 years before the coming into force of this Act imposed by the proviso is also a wise one because that is a period for which any ordinary money-lender can be reasonably expected to preserve evidence.

Owing to these important points of distinction between the two enactments, any use to be made of the decisions under S. 12 of the *D. A. R. Act*, so far as they relate to the inquiry to be made under it for the purpose of interpreting the provisions of this section, must be made with great caution.

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1. See *Gupte's edition of the D. A. R. Act, 1940*, pp. 104-05.

41\*. When the amount of the claim is admitted by the debtor *during the course of an inquiry under* section 40 and the Board, for reasons

Board not bound to inquire, if the claim is admitted.

to be recorded by it in writing, believes that such admission is true and made voluntarily, the Board shall not be bound to inquire in the manner provided in section 40 but may do so if it thinks fit. In other cases, the Board shall be bound to inquire as aforesaid.

### COMMENTARY

*Scope of the section* :—This section empowers the Board to dispense with an inquiry as directed by the previous section, in another case, the first being that of a settlement in writing signed by a debtor made 20 years ago. That case is that of an admission of the amount of a claim, which would of course include a part of it also, on the basis of the well-known maxim, the whole includes a part. Even in such a case the Board is required to satisfy itself that the admission is true and made voluntarily *i. e.* without the use of fraud or force or undue influence on the part of the creditor and to record the reasons for which it feels itself justified in drawing such an inference. It is possible that even in a case of the above nature the Board may have reasons to institute an inquiry as provided in S. 40. The legislature has anticipated such a contingency and provided by the concluding words of the first sentence of this section that even in such cases the Board may make such an inquiry if it thinks fit to do so. By the second sentence it emphasises the fact that in cases not falling under the first sentence it is obligatory on the Board to make an inquiry, in order that there may be no room for doubt.

*Significance of the amendment made in this section* :—The words “during the course of an inquiry under section 40” which have been added by the Act of 1945 make it perfectly clear that the admis-

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\* The words in italics after the word “debtor” in this section were added by S. 17 of Bom. Act VIII of 1945.

sion in order to justify the dropping of an inquiry under S. 40 must have been made during such an inquiry and not on some previous occasion, either before the Board or before any individual witness.

*Analogous law* :—A provision similar to this is to be found in paragraph 2 of S. 12 of the *D. A. R. Act*. It is not exactly in the same terms, the points of distinction between them being :—(1) The words “by the debtor during course of an inquiry under section 40” occurring in this section after the word “admitted” are not found in S. 12 of the *D. A. R. Act* ; (2) In place of the words “the Board” in this section there are the words “the Court” in the latter ; (3) The commas after the words “Board” and “writing” in this section are not found after the word “Court” and “writing” in the latter ; (4) In place of the words “such admission is true and made voluntarily” in this section, there are in the latter the words “such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor” ; (5) Again in place of the words “the Board” there are the words “the Court” in the latter ; (6) After the words “shall not be found” which are common to both, there are the words “in the manner provided in section 40” in this section and the words “so to inquire” in S. 12 of the *D. A. R. Act* and (7) There is an additional sentence as a separate paragraph in the latter as “In other cases &c.” as there is in this section but therein there are the additional words “in which the amount of the claim is admitted” after the words “other cases”. Out of these 7 points, the first, second, fifth and sixth are unimportant. As for the first an admission of a claim or a part of it under S. 12 of the *D. A. R. Act* can only be that of a debtor, as in a suit under that Act other creditors of his are not expected to appear, as they are in a proceeding under S. 17 of this Act and therefore the addition of the words “by the debtor” after the word “admitted” would have been superfluous there and that can be inferred also from the words “as against the creditor” in that paragraph, whereas it was necessary here owing to the possible presence of other creditors of the debtor. As regards the second and the fifth they are due to the difference in the tribunal in the two cases. The sixth is due to the provision as to making an inquiry having

been contained in the same section of the *D. A. R. Act* but in the preceding section of this Act. The third, fourth and seventh however deserve special notice. I will therefore consider them *seriatim*.

*Point No. 3* :—This point relates to certain commas occurring in the text of this section as published in the *Bombay Government Gazette Part IV* dated 30th January 1940, at pp. 2 to 44 thereof. The existence of such punctuation-marks in the text of a section of an Act is sometimes availed of by lawyers for the purpose of putting a particular interpretation on that section. It would therefore be well to state here what value can legitimately be attached to them as aids to interpretation.

*Punctuation-marks as an aid to interpretation* :—The following rules can be deduced from the decided cases as to whether punctuation-marks can or cannot be availed of for the purpose of interpreting the part of the Act in which they occur and if they can be, what is the condition precedent which must be fulfilled before that can be done.

(1) According to the view of the Privy Council<sup>1</sup> and the Allahabad High Court,<sup>2</sup> punctuation-marks such as commas do not form part of a statute.

(2) According to the said High Court therefore they must be disregarded while interpreting the section in which they occur,<sup>3</sup> but according to the Lahore High Court they should be disregarded only if they lead to absurd results.<sup>4</sup>

(3) The Bombay High Court has however in one case<sup>5</sup> expressed the view that they cannot be relied on while interpreting the section in which they occur only if the wording thereof is clear.

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1. *Lewis Pugh v. Ashutosh Sen* (A. I. R. 1929 P. C. 69 56 I. A. 93).

2. *Niaz Ahmad v. Purshottam* (A. I. R. 1931 All. 154).

3. *Mansa v. Musamat Ancho* (A. I. R. 1933 All. 521); *Niaz Ahmad v. Purshottam* (A. I. R. 1931 All. 154).

4. *Gurmukh Singh v. Commissioner of Income-tax, Lahore* (A. I. R. 1944 Lah. 353). See also *Bhola Singh v. Raman Mal* (A. I. R. 1941 Lah. 28, 30).

5. *Indian Cotton Co. Ltd. v. Hari Poonjoo* (A. I. R. 1937 Bom. 39).



Even if the Bombay view is held acceptable, so far as the construction of this section is concerned, it seems to have no application here because the wording thereof seems to be clear and not capable of being construed in more ways than one.

*Point No. 4:—*This point of difference is important because whereas the paragraph of S. 12 of the *D. A. R. Act* above-mentioned requires that the court should be satisfied that the admission besides being true, must have been made by the debtor with full knowledge of his legal rights as against the creditor and would therefore require proof as to its having been made with a full consciousness of his legal rights under the *D. A. R. Act* as against the creditor such as that of insisting upon the latter establishing by cogent evidence what was the amount actually advanced by him in the case of each loan &c., the requirement of this section would be deemed to have been satisfied if the Board finds that the debtor was a free agent when he made up his mind to make the particular admission.

*Point No. 7:—*The difference between the phraseology of the two enactments so far as this point is concerned is that whereas the additional sentence in this section emphasises the duty to make the inquiry directed by S. 40 in all cases in which there is not such an admission as is referred to in the first sentence of the section, that constituting the 3rd paragraph of S. 12 of the *D. A. R. Act* emphasises the duty to make such an inquiry as is directed by the first paragraph in all cases of admission not falling in the second paragraph. Whether so emphasised or not the duty is there according to both the enactments, subject to the provision as to the power to dispense with it in the specific case of an admission of the nature described and therefore in effect the provisions of this section and those of paragraph 2 and 3 of S. 12 of the *D. A. R. Act* must be held to be in *pari materia* except in the matter of the point of difference No. 4 above set forth. Therefore according to the principles of interpretation as to making use of such enactments and the judicial decisions thereunder, such decisions under the 2nd and 3rd paragraphs of S. 12 of the *D. A. R. Act*, except on the point of the debtor having made an admission of the claim or part of the claim

of a creditor with full knowledge of his legal rights as against the latter, can be made use of in cases of doubt as to the meaning of this section or of any portion of it.

42. (1) When the Board inquires into the history and merits of a case under section 40, it <sup>Mode of taking</sup> shall, notwithstanding any agreement <sup>accounts.</sup> between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account, and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation, open and take the account between the parties from the commencement of the transactions.

(2) The Board shall take the account under subsection (1) according to the following rules, namely :—

- (a) Separate accounts of principal and interest shall be taken ;
- (b) In the account of the principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor, as part of the transactions ;
- (c) In the account of principal there shall not be debited to the debtor any sum in excess of a sum due or to accrue due under a decree which the debtor may have agreed directly or indirectly to pay in pursuance of any agreement relating to the satisfaction of the said decree ;

- (d) In the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions ;
- (e) (i)\* In the case of transactions which were commenced before the 1st January 1931, the Board shall take accounts in accordance with the provisions of this section upto 1st January 1931, provided that in the account of interest there shall be debited to the debtor yearly interest on the balance of the principal for the time being at 12 per cent. per annum or at the agreed rate whichever is lower. On taking such accounts the amounts found due on 1st January 1931 in respect of the principal as well as in respect of the interest shall, each separately, be reduced by 40 per cent., notwithstanding that a decree or order of a civil court has been passed in respect of any such amount or portion thereof, provided that if such transactions had commenced *on or* after 1st January 1930, the reduction in both the amount of the principal and interest found due shall be by 30 per cent. The amounts so reduced shall be taken to represent the amount due in respect of the principal and interest on 1st January 1931. Separate accounts shall thereafter be taken of the principal and interest upto the date of the application provided that the interest shall be

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\* The words "on or" printed in italics in this sub-clause after the words "had commenced" were inserted by S. 18 of Bom. Act VIII of 1945.

calculated at the rate agreed to between the parties or 9 per cent. per annum whichever is lower ;

(ii) in the case of transactions which commenced on or after 1st January 1931, in the account of the interest there shall be debited to the debtor yearly interest on the balance of principal for the time being outstanding at 9 per cent. per annum or at the agreed rate whichever is lower ;

(iii) if under any decree passed between the parties the rate of interest allowed on the amount of the principal found due under paragraph (i) or (ii) above is lower than that allowable under this clause, interest on such amount shall be debited at the rate allowed by such decree ;

(iv) in taking accounts under this clause interest to be calculated shall be simple interest ;

(f) All money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Board in its discretion may determine) shall be credited first in the account of interest, and when any payment is more than sufficient to discharge the balance of interest due at the rate specified in clause (e), the residue of such payment shall be credited to the debtor in the account of principal ;

(g) The accounts of principal and interest shall be made up to the date of the institution of the appli-

appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceeds that appearing due on the principal account, in which case double the latter balance shall be deemed to be the amount then due.

### COMMENTARY

*Scope of the section* :—This section lays down the particular method by which an account as directed by S. 38 is to be made up in the case of applications for adjustment of debts made under S. 17. It is divided into two sub-sections, the first of which requires all agreements, statements or settlements of accounts and contracts made between the parties affecting the method of making up accounts as to their dealings to be set aside and the second lays down the rules to be observed which comprise the method referred to before.

It should be particularly noted here that since the section begins with the words "When the Board inquires into the history and merits of a case under section 40" it must be understood to have been intended to be acted upon in those cases only in which the Board decides to make an inquiry into the history and merits of the case and proceeds to make it and that naturally those in which it decides otherwise and does not proceed to make an inquiry fall outside the purview of the whole of this section. Cases of the latter class arise when before the inquiry contemplated by S. 40 is commenced the debtor admits the claim. If in such cases the Board, for reasons to be recorded by it in writing, believes that such admission is true and had been made by the debtor voluntarily, it can dispense with the inquiry. When in any particular case it decides to dispense with it and records in the proceedings its reasons for arriving at that decision, not only does the necessity to make the inquiry under S. 40 cease in that case but S. 42 also ceases to be applicable to that case. The facts of the debtor having made the

required admission and of the Board believing it to be true and to have been made voluntarily cannot by themselves have the above effects. But it will be the Board's decision to dispense with the inquiry and its recording its reasons for such a decision that will have those effects. In their absence not only should the inquiry under S. 40 be made but the provisions of S. 42 too should be acted upon. It may be noted that the power to dispense with the inquiry is discretionary and that therefore a Board may not think it proper to exercise it in a particular case, inspite of the debtor therein having admitted the creditor's claim.

*Sub-section (1) :—*This sub-section lays down that while inquiring into the history and merits of the case as required by S. 40 the Board shall open up the whole course of dealings between the parties from their very commencement and take an account from there without paying any regard to the existence of (1) any agreement between the parties or the persons (if any) through whom they claim, as to (a) allowing compound interest or (b) setting off the profits of a mortgaged property without making up an account thereof in consideration of interest not being debited to the debtor or (c) determining the manner of taking the account by any other method and (2) (a) any statement or settlement of account or (b) any contract purporting to close previous dealings and create a new obligation.

It must be noted here that so far as the setting aside of settlements of account is concerned, there is the limitation contained in the proviso to S. 40.

*Sub-section (2) :—*This sub-section prescribes the rules which are required to be observed while taking an account as aforesaid. These are contained in its 7 clauses marked (a) to (g). Clause (e) thereout is again sub-divided into 4 sub-clauses (i) to (iv). Clause (a) contains a general provision that separate accounts shall be made up of the principal and the interest of a debt; clauses (b) to (d) contain directions as to how the account of the principal of the debt is to be made up; clause (e) contains directions as to how the

account of the interest of the debt is to be made up ; clause (f) prescribes what payments should be given credit for to the debtor and in which of the two accounts mentioned in clause (a) that should be done, and clause (g) directs that the said accounts shall be made up to the date of the presentation of the application under S. 17, that ordinarily the aggregate of the amounts due under the said accounts shall be held to be the amounts due at the said date but that if that due under the account of interest exceeds that due under that of the principal then it should be reduced to such an extent as to equalise the two amounts and that in such a case the total of those amounts should be held to be due. Some of these clauses are required to be explained clearly. I therefore proceed to do so.

*Clauses (b) to (d) :—*As stated above these clauses direct how the separate account of the principal directed by clause (a) to be made up is to be made up, *i. e. to say*, which amount should and which should not be taken into account while ascertaining the principal amount due, even though they may have been debited in the creditor's books and there may be legal documents executed in his favour. I state below in a tabular form the two sets of amounts.

*To be debited.*

*Not to be debited.*

- |                                                                                                                         |                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Such amounts as may from time to time have been actually received by the debtor personally from the creditor.</p> | <p>1. Any amount in excess of that due or likely to accrue due under a decree which the debtor may have agreed directly or indirectly to pay pursuant to any agreement between them as to the satisfaction of the said decree.</p> |
| <p>2. Such amounts as may from time to time have been received by others on the</p>                                     | <p>2. Any amount of accumulated interest which may have been capitalised at any statement</p>                                                                                                                                      |

*To be debited.*

debtor's account from the creditor.

*Not to be debited.*

or settlement of accounts or as the result of any contract made between them in the course of the transactions.

3. The price of goods, if any, such as food, grains, seeds, implements, live-stock, &c., which may have been sold by the creditor to the debtor as part of the transactions between them.

*Clause (c) :—*This is the single clause in this section laying down the method by which the amount of interest due from a debtor to a creditor is to be ascertained. It has however been subdivided into 4 sub-clauses (i) to (iv). Thereout sub-clause (iv) contains a general provision that simple interest alone is to be calculated while making up an account of the interest. Sub-clauses (i) and (ii) draw a distinction between transactions entered into before 1st January 1931, *i. e.* upto 31st December 1930 and those entered into on or after that date and sub-clause (i) further draws a distinction as amongst transactions entered into before 1st January 1931 between those which had commenced before and those on or after 1st January 1930. The nature of the provisions in these sub-clauses renders it necessary to consider separately the method of calculation of interest in the cases of (1) transactions entered into before 1st January 1931 and (2) transactions entered into on or after 1st January 1931. Those which fall into the first class will again have to be considered in two batches, namely (a) those which were entered into before 1st January 1930 and (b) those which were entered into on or after 1st January 1930. The point of distinction between those falling in class (1) and class (2) is that in the former interest is to be debited at 12 per cent. per annum or at the agreed rate, whichever is less, and in the latter it is to be debited at 9 per cent. per annum



while the point of distinction between cases falling under class (1) (a) and class (1) (b) is that the amounts of the principal and the interest calculated as above, are to be reduced by 40 per cent. in the former case and by 30 per cent. in the latter, whether they are due under accounts, bonds, pro. notes, mortgages &c.\* or under the decrees or orders of a civil court, and after that is done, interest at 9 per cent. per annum or at the agreed rate whichever is lower, is to be calculated on the principal amount so reduced upto the date of the application. Sub-clause (iii) which affects all the above cases provides that if a decree had been passed by a court as to any amount out of those above referred to, and it has provided for a rate of future interest lower than that applicable to the case, interest shall be debited from the date of the decree to that of application at such lower rate.

This result is arrived at on further sub-dividing sub-clause (i) into four parts as below :—

1. " In the case of transactions which were commenced before 1st January 1931 x . . x . . x . . x at 12 per cent. per annum or at the agreed rate, whichever is lower ; "
2. " On taking such accounts x . . x . . x . . x the reduction in both the cases shall be by 30 per cent " ;
3. " The amounts so reduced shall be taken to represent x . . x . . x . . x amount due in respect of the principal and interest on 1st January 1931 " ;

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\* In so far as the provisions herein-contained relate to or affect promissory notes or to transactions based on promissory-notes, and proceedings arising out of them they are validated upto 31-3-47 by Ordinance No. XI of 1945 published at pp. 85-87 of the B. G. G. Pt. IV dated 15th May 1945.

This note has now a historical value only because the Privy Council has, in its judgment in the case of *Profulla Kumar Mukherjee and others v. The Bank of Commerce Ltd., Khulna*, delivered in January 1947 and published in India about 12th March 1947, ruled that a provision of the said nature in the *Bengal Money-lenders Act, 1940* was in pith and substance legislation regarding 'Money-lending' and was not therefore *ultra vires* the Provincial Legislature of Bengal as had been held by the Federal Court in India.

4. "Separate accounts shall thereafter be taken x . . x . . x . . x at the rate agreed to between the parties or 9 per cent. per annum, whichever is lower. "

Thereout the first part consists of a main provision and a proviso. The main provision is that in the case of transactions which were commenced prior to 1st January 1931, the Board is first to make up accounts upto that date as provided in this section and the proviso is that while doing so (simple) interest on the balance of the principal for the time being shall be debited at 12 per cent. per annum or at the agreed rate, whichever is lower.

The second part too consists of a main provision and a proviso. The main provision is that after the amounts of principal and interest due before 1st January 1931 are thus ascertained, each of them shall be separately reduced by 40 per cent. irrespective of the fact that in respect of any such amount or a portion thereof a civil court may have passed a decree or an order. This provision is subject to the proviso or an exception that if the said transactions (or any of them) had commenced on or after 1st January 1930 the amounts of principal and interest due in respect thereof shall be reduced by 30 per cent. instead of 40 per cent.

The third part sums up the result of the application of the two parts for the purpose of the application of the fourth. It is in effect that the reduced amounts of principal and interest thus arrived at shall be taken to be the basis for further making up the accounts upto the date of the application.

The fourth part which also consists of a main provision and a proviso says that separate accounts of the principal and interest shall further be made up for the period from 1st January 1931 to the date of the application and that while doing so interest on the principal amount due shall be debited at 9 per cent. per annum of the agreed rate, whichever is lower.

The whole of this sub-clause prescribes the method of making up accounts relating to transactions which may have commenced prior to 1st January 1931, that of making up those relating to

transactions which may have commenced on or after that date being prescribed exclusively by sub-clause (ii). Sub-clause (iii) is in the nature of a proviso or exception to the provision in the two preceding sub-clauses as to the rate at which interest is to be debited, in the case of those amounts with respect to which the creditor may have obtained a decree from a civil court. It is applicable only if and in so far as the decree may have provided for future interest being recoverable on the decretal amount at a rate lower, in the case of transactions entered into before 1st January 1931, than 12 per cent. per annum upto 31st December 1930 and in the case of those entered into on or after that date, than 9 per cent. per annum upto the date of the application.

*Special features of this clause* :—The special features of this clause are :—(1) It fixes special rates of interest for loans advanced before 1st January 1931 *i. e.* upto 31st December 1930, and for those advanced on or after that date, which are 12 and 9 per cent. per annum respectively.

(2) It introduces a novel principle of the reduction of debts due upto particular dates by certain percentages, that in respect of debts due as the result of loans advanced before 1st January 1930 being 40 per cent. and that due as the result of those advanced from 1st January 1930 onwards being 30 per cent. Although the Act has been amended in several other respects this provision for an arbitrary cut has remained the same. It was justified on the ground of a fall in the prices of agricultural crops since 1931. They have no doubt considerably risen since 1942. But so have the prices of the other necessities of the life of the agriculturists. We can therefore easily realise the truth of the conclusion the Famine Inquiry Commission, 1945 that the rise in the prices of the crops have not enabled all agriculturists to wipe off their indebtedness completely or substantially but only the agriculturists having large holdings and to a certain extent those having medium holdings.<sup>1</sup> The conditions

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1. <sup>o</sup> Vide *The Bombay Co-operative Quarterly*, No. XXIX., 3, P. 134. A realistic picture of the effect of the war on rural economic conditions which is very deleterious, will be found in *The Rural Karnatak* by Dr. M. N. Desai (Anand Publishers, Sirsi).

which necessitated such an arbitrary measure for putting an end to agricultural indebtedness cannot therefore be deemed to have so ceased to exist as to justify a demand for the abolition of such a measure which is primarily intended for the benefit of the small holders. Anyway it remains unamended and yet it can no longer be attacked as *ultra vires* because the Privy Council has ruled in *Profulla Kumar Mukherjee and Others v. The Bank of Commerce Ltd., Khulna* in January 1947 that a similar provision in the *Bengal Money-lenders Act, 1940* was legislation concerning 'Money-lending' and therefore within the powers of the Provincial Legislature of Bengal. The only consolation to the money-lender is that it has been decided by the Nagpur and Lahore High Courts that such provisions must as far as possible be construed in favour of the subject.<sup>1</sup> This is technically known as "the doctrine of mollification." It has no application however when the language of the statute is clear.<sup>2</sup>

(3) In the application of the said principle it makes no distinction even between debts which have already been subjected to a strict scrutiny by the civil courts as required by the provisions of SS. 12 and 13 of the *D. A. R. Act, 1879* and S. 3 of the *Usurious Loans Act, 1918*, and those not so subjected.

Note:—For a comparison of the power under clause (e) of sub-section 2 of this section with that under S. 45 and its contrast with that under S. 52 so far as they affect a civil court's decree see the Commentary on S. 46 and S. 52 respectively.

*Clause (f)*:—This clause serves three purposes, namely:—(1) it gives directions as to giving credit to the debtor for all payments made by him or on his behalf, whether in cash or in kind, for all profits received by the creditor from him, for services rendered by him to the creditor and for any other advantages received by him from the latter

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1. *Abdul Majid v. Digambar Jairam* (A. I. R. 1941 Nag. 249, 251); *Nagin Singh v. Jagannath* (A. I. R. 1944 Lah. 422, 423-24); *Munshi v. Daulat Ram* (A. I. R. 1944 Lah. 349, 351).

2. *Palani Gaundan v. Peria Gaundan* (A. I. R. 1941 Mad. 153, 160); *Surendra Narain v. Bholanath* (A. I. R. 1943 Cal. 613, 622).

in the course of the dealings between them; (2) it empowers the Board, wherever necessary, to estimate the monetary value of the items to be credited to the debtor according to its discretion and (3) it directs that such credit shall be first given towards the amount of interest due as per clause (b) till the date when the debtor became entitled to get it and the residue, if any, towards the principal amount then due.

This provision renders it necessary that interest must be calculated upto the said date and if the amount to be given credit for exceeds that of the interest, the whole of it should be treated as paid and the amount in excess of it must be given credit for towards the principal amount due till then. The balance of the principal thus left is to be treated as the principal for the calculation of interest for the period subsequent to that of the said credit.

*Clause (g) :-* Lastly, this sub-clause provides that accounts as per the previous clauses of this section should be made up to the date of the institution of the proceeding under S. 17 and that the aggregate amount of principal and interest thus left unpaid should be deemed to be the amount due to the creditor upto the date of the application. This latter provision is however subject to the proviso which embodies the well-known Hindu law Rule of Damdupat. It is in effect that if the amount of interest as calculated according to the prescribed method exceeds the amount of the principal amount then due, the amount of interest in excess of it is to be disallowed and only double the amount of the principal is to be held due on the date of the application. It should be borne in mind that this rule is to be applied only once during the process of taking accounts and that too after the amount of interest is calculated upto the date of the application from the date of the last payment, so that when it is applied the creditor gets double the balance of the principal due after the last payment is given credit for.

Owing to the complicate nature of the provisions of this section and the use intended to be made thereof by the Boards it would have been better if the Legislature had made its intention clear by giving concrete illustrations exemplifying such application which could be

looked upon by judges as relevant and valuable in construing the text of the statute<sup>1</sup> and as indicative of such intention when not inconsistent with the language of the enactment illustrated,<sup>2</sup> although the enactment may be inconsistent with ideas derived from any other system of jurisprudence.<sup>3</sup>

*Analogous law*:—A comparison of the provisions of this section with those of S. 13 of the *D. A. R. Act, 1879*, which they replace so far as debtors under this Act in the areas for which Boards are established are concerned, makes it clear that the only difference between them is on the following points, namely:—

(1) In the opening part of this section there are the words “the Board” and “section 40” in place of the words “the Court” and “section 12” in the said section of the *D. A. R. Act*.

(2) The direction to take an account in this sentence is in the words “open and take the account between the parties from the commencement of the transactions” instead of in the words “open the account between the parties from the commencement of the transactions and take that account x..x..x”

(3) The section of this Act has been sub-divided into two sub-sections, the first containing the directions which have been explained while commenting upon that sub-section<sup>4</sup> and the second the rules for taking the account as directed, while the above section of the *D. A. R. Act* contains no such sub-division, with the result that the rules given therein form part of the only sentence therein.

(4) The rules in clauses (a) and (c) of both the sections are word to word the same and so is that in clause (d) of both except that in the said clause of the section in the *D. A. R. Act*, the words

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1. Halsbury's Laws of England 2nd ed. Vol. XXXI Para. 609 at p. 486.

2. *Satish Chandra v. Ram Dayal* (I. L. R. 48 Cal. 388 Sp. B.), in which the previous rulings in *Dubey Sahai v. Ganeshi Lal* (I. L. R. 1 All. 34, 36), *Queen Empress v. Fakirappa* (I. L. R. 15 Bom. 491, 496) and *Kailas Chandra v. Sanatun Chung Barooie* (I. L. R. 7 Cal. 132, 135) are referred to.

3. *Mahomed Syedol v. Yeoh Ooi Gurk* (43 I. A. 256).

4. See p. 194 *supra*.

"unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable", leave it to the discretion of the Court whether to make an exception of a particular case to the rule in that clause for reasons to be recorded while the corresponding clause in this section does not invest the Board with any such discretionary power, however strong the reasons for its exercise may be.

(5) Clause (e) of this section is entirely different, for the reasons already explained,<sup>5</sup> from the corresponding clause in S. 13 of the *D. A. R. Act*, except in this respect that the provision as to debiting simple interest, not however monthly as in the *D. A. R. Act*, is re-enacted in sub-clause (iv) of clause (e) of this section.

(6) In clause (f) the word "Court" is replaced by the word "Board", the words "or with the aid of arbitators appointed by it" after the word "discretion" are omitted and in place of the words "due at the time it is made" there are the words "due at the rate specified in clause (e)" in our section.

(7) The only difference in clause (f) is that the words "the date of instituting the suit" are here replaced by the words "the date of institution of the application."

It can be seen from the above that the only material points of difference are those in clauses (d) and (e) as above-explained. Therefore except for those points this section is in *pari materia* with S. 13 of the old Act and therefore the decisions under the latter can rightly be made use of for interpreting the words of this section with due regard to the said points.

For similar provisions in other Provincial Debt Laws see Table No. V at the end of the *Introduction*.

In so far as this section authorises the Board to go behind promissory notes and transactions based upon them see the foot-note at p. 197.

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5. See pp. 196-200 *supra*.

### 43. When in the course of any proceedings under this

Act the Board finds that there are reason-

When books of account are not produced Court to presume that they are unfavourable to creditor.

able grounds to believe that a creditor has in his possession or under his control any books of account or any other document which is material to any transaction in any proceedings before the Board and such books or document is not produced by such creditor before the Board in such proceedings, the Board shall presume that such books or document if produced would be prejudicial to the interest of such creditor.

### COMMENTARY

*Scope of the section* :—This section contains a rule of evidence applicable to all the proceedings that may be instituted under this Act. It is not confined in its operation to proceedings under S. 17 of the Act.

It authorises the Board to presume that any books of account or any other document called for but not produced by a creditor in the proceeding in which the order of production is made, would, if produced, be prejudicial to his interest. The conditions which must be satisfied before the drawing of such a presumption would be justified are :—(1) there must be reasonable grounds for the Board to believe that the creditor concerned has the book or books of account or other document in his possession or under his control, *i. e. to say*, in the possession of a person who is his servant or dependent or in any way so closely connected with him as to be under an obligation to act according to his bidding and (2) the book or books of account or other document, must, in the opinion of the Board, be material to any transaction in the proceedings in which the order is made.

*Marginal note to this section* :—It may be noted that whereas the section provides for the case of the non-production of a document as well as for that of books of account the marginal note to it does not refer to the provision relating to the former. It may also be noted that



whereas the section confers on the *Board* the power to make an adverse presumption the marginal note speaks of *The Court* making such a presumption. In such a case the wording of the marginal note cannot be taken to be a guide to the interpretation of the section. See pp. 18-20 *supra* for the case-law on this point.

*Analogous law*:—The principle underlying this provision is that embodied in the legal maxim *Omina preasumuntur contra spoliatorem*, which is based on the decision in *Williamson v. Rover Cycle Co.*,<sup>1</sup> to the effect that if a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted. The Indian Legislature too has long since recognised this as a sound rule of evidence to be acted upon by the courts in this country.<sup>2</sup>

As regards the power of a civil court to order the production of any document by any party to a suit before it see Or. XI r. 14 in Sch. I to the *Civil Procedure Code, 1908*, and as regards the consequence of the non-production by a party of a document although in his possession or power see Or. XIII r. 2 in the same Schedule to the said *Code*. It must be borne in mind, however, that these provisions have not been specifically extended to proceedings under this Act by any provision therein.

#### 44. When the mortgaged property is in the possession of the mortgagee or his tenants other

In certain cases rent may be charged in lieu of profits.

than the mortgagor, and the Board is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 42 :

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1. (1901) 2 I. R. 615, 619.

2. See Illustration (g) to S. 114 of the *Indian Evidence Act, 1872*, which is so generally worded as to be capable of justifying the drawing of several other kinds of presumptions, and pp. 926-27 of the Commentary on that Act by S. C. Sarkar, sixth edition (1939).

Provided that if it be proved that in any year there was any suspension or remission of rent or land revenue of such land under section 84A of the *Bom-  
Bom. V of 1879. bay Land Revenue Code, 1879*, an abatement of the whole or part of such amount may be allowed for the year.

## COMMENTARY

*Scope of the section* :—This section contains a rule for the guidance of the Board in cases in which it makes up an account of the profits received by a mortgagee of a debtor which according to S. 42 (f) are required to be given credit for to him. Its application is therefore limited to those cases in which an account of a mortgage of a debtor's property which had remained in the possession of the mortgagee either directly or through tenants other than the mortgagor himself and it imposes a condition for its applicability that the Board must be unable from the materials as its disposal or command to determine what profits the mortgagee must be deemed to have received during a particular period, which may either be the whole of that for which he was in possession of the property as above if no accounts at all are forthcoming or a portion of such period if accounts of the remaining portion thereof only are forthcoming. The power given by the rule is that of fixing a fair rent of the property for the period or a portion of it, as the case may be, and of giving credit to the debtor for the amount thereof while giving effect to the provisions of clause (f) of S. 42.

*Proviso* :—This rule is controlled by a proviso to the effect that if the mortgagee proves that the Provincial Government had granted any suspension or remission of rent or land revenue of such land under S. 84A of the *Bombay Land Revenue Code, 1879* in any year, the Board may allow for that year an abatement of the whole or part of the amount held chargeable.

45. (1) Notwithstanding anything contained in any law, custom or contract, whenever it is alleged during the course of the hearing of an application made under section 17 that any transaction purporting to be a sale of land belonging to a debtor was a transaction in the nature of a mortgage, the Board

Power of Board to declare transactions purporting to be a sale to be in the nature of mortgage.

shall declare the transaction to be so, if the Board is satisfied that the circumstances connected with that sale-deed showed it to be in the nature of a mortgage.

(2) Nothing in this section shall apply to—

- (i) any transaction entered into before 1st January 1927 ;
- (ii) any transaction which has been adjudged to be a sale by a decree of a court of competent jurisdiction ; and
- (iii) any property belonging to a debtor and purchased by a third person from the transferee of a debtor on or before the 15th day of February 1939.

#### COMMENTARY

*Scope of the section:—*As the marginal note to this section indicates it contains an important provision conferring on the Board the power to declare a transaction purporting to be a sale to be in the nature of a mortgage. The note is however silent as to the conditions subject to which it is capable of being exercised.

As to them it must be noted that the section has been subdivided into two sub-sections, the first of which contains the main provision and lays down the conditions in which the power must be exercised and the second exempts the 3 classes of transactions speci-

fied in clauses (i) to (iii) thereof from the operation of sub-section (1) even though the conditions laid down therein may be satisfied in their case.

*Sub-section (1) :—*The conditions for the exercise of the power laid down in this sub-section are the following ones, namely:—(1) It must have been alleged during the course of the hearing of an application made under S. 17 that a transaction purporting to be a sale of land belonging to a debtor was at transaction in the nature of a mortgage.

The implications of this condition are:—(1) that the allegation above-mentioned can be made at any stage of the *proceeding* under S. 17, for, the adverb of time used therein is “*whenever*”, which means at any time whatever so long as the hearing of the application is not finished and (2) that the person making the allegation need not necessarily be the debtor in the application because it is not specified in the sub-section by whom the allegation should be made. This being so, there seems no reason why a creditor of a debtor should not be allowed to make an allegation that a particular transaction between the debtor and another creditor of his was one in the nature of a mortgage though apparently that of a sale. This is as it should be, if the beneficial provisions of this legislation are to have their full effect, for, if a creditor not a party to such a transaction succeeds in his allegation, and if the amount of the mortgage-debt is less than the value of the land the additional portion of its value would enure for the benefit of that creditor and of all the other unsecured creditors of the debtor in view of the provisions of SS. 48 to 54 *infra*.

(2) The Board must be satisfied that the circumstances connected with the sale-deed showed that the transaction must be one in the nature of a mortgage.

The circumstances contemplated by this sub-section may consist of:—

(a) the relation of a creditor and debtor subsisting between the parties from a date prior to that of the transaction under consideration;

(b) the proportion which the amount of consideration bears to the probable market-value of the property at the date of the transaction;

(c) the possession of the property continuing with the debtor even after that date under a rent-note of the same date reserving an annual rent, whose amount may be equal to that of simple interest at the prevailing rate of the locality on the amount of consideration;

(d) the assessment of the land being continued to be paid by the debtor and the costs of improvement thereof also, if any made, being borne by him;

(e) he having no other land than the one in the sale-deed or having such a piece of other land only as would not be capable of being used for agricultural purposes;

(f) the vendee being an inhabitant of a town or another village than that in which the land is situated.

The list is not exhaustive. Each case may have its own peculiar circumstances and therefore the Board will have to exercise its own discretion while drawing the required inference. One remarkable fact about this provision is that it does not require any direct evidence, oral or documentary, in support of the allegation and thus eliminates the necessity of bringing up before the Board somehow witnesses to depose that they are aware of there being a secret contemporaneous oral agreement to treat the transaction as one of mortgage though apparently that of sale, which would have been an encouragement to perjury in cases in which the transaction was an old one and the debtor before the Board was not personally the vendor.

*Sub-section (2):*—This sub-section exempts from the operation of the first sub-section three classes of the transactions, namely:—

(i) those transactions which had been entered into prior to 1st January 1927;

(ii) those which have once been declared to be those of sale outright by a civil court of competent jurisdiction; and

(iii) those relating to properties which though originally belonging to the debtors had been purchased by persons who are not their creditors, on or before 15th February 1939, not from the debtors directly but from their transferees.

Exception (i) narrows down the scope of sub-section (1) to the cases of sale-transactions between debtors and creditors which had taken place on or after 1st January 1927. Hence an allegation as required by that sub-section would not deserve to be taken into consideration by the Board if the transaction, whatever its nature, had taken place on or after the said date. It must be noted that this is a provision favouring the creditor-class inasmuch as it makes sale-transactions entered into prior to the said date unchallengeable and makes absolute the vendees' titles to the properties to which they relate, whatever the real nature of those transactions may be.

Exception (ii) confers a sanctity on the adjudication respecting transactions between money-lenders and agriculturists made by competent civil courts. Contrast with this the provision in S. 42 (e) which renders amounts due under transactions entered into between 1-1-30 and 31-12-30 liable to a 30% reduction and those due under transactions entered into before 1-1-30 to a 40% reduction even though the creditors concerned may have obtained decrees of civil courts with respect to them. Section 46 makes this very clear. This provision too should therefore go a great way towards allaying the fear of the creditor-class that this Act is intended to crush it out of existence.

Exception (iii) is intended to perpetuate the titles of those purchasers who had purchased the properties of the debtors which answer to two kinds of descriptions, namely (1) that they had been purchased from the transferees of the debtors, not from them directly, irrespective of the nature of the original transfer and (2) that they had been purchased on or before 15-2-39. This provision gives a protection to third parties. It too should go a great way towards

removing the apprehension of persons dealing with agriculturist debtors that their titles are never secure, because, in the first place, it renders unchallengeable all purchases made even from the creditors of the debtor on or before 15-2-39 and does not require proof of their having been made with a *bona fide* motive, without notice and for a valuable consideration.

*Section as a whole* :—The relation between the two sub-sections is such that the second controls the first and that particularly the first condition required by it must be fulfilled. That circumstance makes it necessary to consider the two sub-sections together or the section as a whole. That done the result is that the Board must declare any transaction purporting to be a sale of land belonging to a debtor to be in the nature of a mortgage if the following two conditions are fulfilled, namely :—(1) it must have been alleged by any person, who is interested in a proceeding under S. 17 of this Act, during the course of hearing of such an application that the said transaction, not being (a) one entered into before 1st January 1927 or (b) one which has already been adjudged to be a sale by a decree of a competent court or (c) concerning a property which though originally belonging to a debtor had been purchased by a third person from a transferee of the debtor on or before 15th February 1939, was in the nature of a mortgage ;

(2) The Board must be satisfied that the circumstances connected with the sale-deed relating to it are such that the allegation must be held to be true.

*No bar of law, custom or contract to the contrary* :—It must have struck the reader that the above provision is against the ordinary law as contained in sections 91 and 92 of the *Indian Evidence Act, 1872* and that while inquiring into the circumstances attending the sale the Board may have occasions to look into documents not admissible under S. 49 of the *Indian Registration Act, 1908*, and S. 35 of the *Indian Stamp Act, 1899*. This contingency seems to have been anticipated by the Legislature when it framed this section and to have been provided for by the initial words thereof namely ;—

"Notwithstanding anything contained in any law, custom or contract," which mean that the Board is empowered to make the declaration mentioned in the section even though the same could not have been done according to a contrary provision in any law in force or according to any custom prevalent in a particular locality or amongst the members of a particular community or class of person or according to the terms of a contract entered into by the parties.

*Note* :—For a contrast of the power under this section with those under SS. 42 (2)(c)(i), 46 and 52 so far as they affect civil court decrees see the Commentary on SS. 46 and 52 *infra*.

*Analogous law* :—Anyone acquainted with the provisions of S. 10A of the *Deccan Agriculturists Relief Act, 1879* can readily see that there are some striking points of difference between the provisions of this section and those of the said section of the *D. A. R. Act*. They are:—

(1) The allegation referred to in S. 10A of that Act, must be made in a suit or proceeding to which an agriculturist as defined in S. 2 of that Act must be a party. That in this section may be made in the course of hearing of any application under S. 17 of this Act.

(2) The transaction in the former case must be one "in issue in the suit or proceeding" and must have been entered into by an agriculturist as there stated or by a person, if any, through whom he claims and the suit or proceeding must be of such a character that the rights and liabilities of the parties thereunder must be triable wholly or in part under Ch. II of the said Act. Here what one is required to prove is merely that the transaction is one purporting to be the sale of land belonging to one who is a debtor under the Act.

(3) The first proviso to S. 10A of the *D. A. R. Act* requires that the agriculturist or the person, if any, through whom he claims, was an agriculturist at the time of such transaction as well. This section does not require proof that the person to whom the land belonged would have been held to be a debtor under this Act, had this Act been in force at the time of the transaction.



(4) The second proviso, to the section of the *D. A. R. Act* requires that the suit in which the question is raised must not be a suit to which a *bona fide* transferee for value without notice of the real nature of the transaction or his representative holding under a registered sale-deed executed more than twelve years before the institution of such suit, is a party. Under sub-section (2) of the present section it is immaterial who are parties to the application under S. 17 of this Act in which the question is raised and therefore such a question can be raised "in the course of hearing of any application" under S. 17 but there are limitations as to the date of the transaction, the parties to the transaction in force at the date of the application, and the time when that transaction had taken place as above-explained. There is a further limitation as to there being a decree of a civil court declaring the transaction to be one of sale but that is based on the principle of *res judicata* embodied in S. 11 of the *Civil Procedure Code, 1908*, which is applicable to all suits and proceedings under the *D. A. R. Act*. It is only because of the special constitution of Debt Adjustment Boards and the special nature of the proceedings before them that clause (ii) of sub-section (2) of this section was required to be enacted.

(5) The said section of the *D. A. R. Act* empowers the civil court trying the suit or proceeding, in which the question arises, to determine the real nature of the transaction and decide such suit or proceeding in accordance with such determination on disregarding only the provisions of S. 92 of the *Indian Evidence Act 1872*, S. 49 of the *Indian Registration Act, 1908* and any other law for the time being in force" but this section authorises the Board to make the required declaration "notwithstanding anything contained in any law, custom or contract."

(6) The section of the *D. A. R. Act* requires proof, oral or documentary, as to the alleged real nature of the transaction but the section of this Act under consideration empowers the Board to make the required declaration in view of "the circumstances connected with the sale-deed" alone, *i. e.* to say, in view of the circumstantial

evidence alone, that may have been brought to light in the course of the proceedings before it. This simple and sane provision will, it is hoped, obviate the necessity of bringing forward direct contemporaneous oral evidence as to the terms of the true contract between the parties to the transaction, which leads some unscrupulous agriculturists and their advisers to concoct such evidence in cases falling under S. 10 A of the *D. A. R. Act*.

*This section and section 37* :—It is sometimes the case that though an agriculturist may have passed a sale-deed with respect to his only landed property to a man, he may not have put the latter in possession of it but may be paying rent to him on passing a rent-note. So long as the vendee continues to get rent regularly, he remains satisfied with the income of rent. But when for two or three years the vendor does not pay rent he becomes impatient and files a suit in a civil court for the recovery of possession of the property on the basis of the rent-note. The vendor on being summoned may contend that the transaction though apparently one of sale was really in the nature of a mortgage, that therefore he is not bound to deliver possession of the property but will pay up the debt that may be ascertained to be due on making up an account and that he being a "debtor" under this Act the suit may be transferred to the competent Board under S. 37 of this Act.

Now under S. 37 as amended, the civil court has no longer power to determine the questions whether the defendant is a debtor under this Act and whether the total amount of his debts on the relevant date did not exceed Rs. 15,000. But can this be deemed to be a suit for the recovery of a debt due from the defendant? I am of opinion that it cannot, not only because as originally filed it was one for the recovery of possession of a property but also because even after the defendant appear and pays the necessary court fee and gets the suit converted into one for the redemption of the property, then even thereafter, it does not become by conversion "a suit for the recovery of a debt." The case is not therefore covered by the wording of S. 37 (1) as it now stands and therefore the

civil court would be entitled to proceed to decide whether the defendant's contention that the transaction was really one of mortgage, is correct and then decide further whether the suit should or should not be transferred under S. 37 (1). Such was indeed the ruling of the Bombay High Court *In re Reference under Or 46 r. 1*.<sup>1</sup> Although S. 37 has since been completely overhauled, the said ruling continues to be applicable in a case of the above nature so long as the Board concerned has not sufficient materials before it and has no reason to act under S. 37 (2).

46. (1) Subject to the provisions of sub-sections (2) and (3), if any decree or order is passed by a competent court in respect of any debt, the amount due under such decree in respect of both the principal and interest, shall, in taking accounts under section 42, be deemed to be binding between the parties.

Decretal debts  
how far binding.

*\*Provided that if such decree or order does not specify the amount of principal and interest separately or does not contain any material for determining the same, two-thirds and one-third of the amount awarded by such decree or order shall, for purposes of this section, be deemed to be the amount awarded on account of principal and interest respectively.*

(2) In so far as such decree or order is in respect of transactions entered into before 1st January 1931, the amount of principal and interest found due on 1st January 1931 shall be reduced by 40 per cent. as provided in para-

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<sup>1</sup> 45 Bom. L. R. 445; Followed in *Ranchhod v. Musa Jibhai* (46 Bom. L. R. 715).

\* The proviso to sub-section 1 of this section was added by S. 19 of Bom. Act VIII of 1945.

graph (i) and the rate of interest shall be modified as provided in paragraph (iii) of clause (e) of sub-section (2) of section 42, provided that if the said transactions commenced after 1st January 1930 the reduction shall be by 30 per cent.

(3) In so far as such decree or order is in respect of any transactions entered into on or after 1st January 1931 the rate of interest awarded by such decree or order shall be modified as provided in paragraph (ii) and paragraph (iii) of clause (e) of sub-section (2) of section 42.

*Scope of the section* :—This section merely lays down how decretal debts should be treated while making up accounts under S. 42. It is divided into three sub-sections. The first thereof says that if a competent court has passed a decree in respect of any debt due by a debtor whose debts are to be adjusted, the amounts due under it both as regards the principal and interest shall be held to be binding between the parties to such a decree subject to the provisions contained in the proviso to sub-section (1) and in sub-sections (2) and (3) of that section. Those sub-sections only repeat what has already been specifically stated in S. 42 (2) (e) (i) to (iii). The provisions thereof have already been explained in details. No further explanation thereof is therefore necessary. The implications of the wording of sub-section (1) and the proviso thereto however deserve to be stated clearly and I therefore do so.

*Sub-section (1)* :—From the fact that it is provided in this sub-section that the amounts of principal and interest due by a debtor to a creditor under a decree of a competent court obtained by the latter against the former in respect of any debt shall be binding "between the parties" it follows that it would be open to any other creditor of the debtor to challenge the decree on the ground of collusion between the parties thereto and if any such does so while accounts are being taken under this Act, the Board

would be bound to ascertain whether and if so, how far the allegation as to collusion is true. It has power to do so under S. 6 (1) of this Act.

*Proviso to that sub-section* :—This proviso has reference to the provisions of sub-sections (2) and (3) and lays down a workable rule for determining the amount of principal and interest for the purposes of applying the cut and of calculating interest as provided in S. 42 (2) (e) in cases in which the decree or order does not contain a clear mention thereof separately or does not contain any definite clue to its determination. That rule is that in such cases two-thirds of the amount awarded shall be deemed to be the principal and the remainder to be the interest. This rule seems to have been inserted in order to have no room for the contention that the provision in S. 42 (2) (e) cannot be acted upon in such cases owing to the practical difficulty of ascertaining the portions of the principal and interest included in the decretal amount.

*Meaning of the word "Court" in this sub-section* :—The word "Court" in this sub-section is to be construed in the light of the provisions of S. 2 (4) (b). If the decree of an original court is merged in that of a higher court whether it is a District Court or the High Court, it is the latter that comes under the operation of this sub-section. There is absolutely no room for any doubt on this point, because the decree of the original court is in such a case non-existent and because there is no ground for assuming that simply because a decree passed under the ordinary law had been superseded by another of a higher court, the debt to which it relates becomes immune from being adjusted under the provisions of SS. 38 to 52.

- 47\*. (1) On the receipt of an application for the adjustment of debts the Board shall give a notice to the Collector requiring him to state to the Board within the time prescribed the amount of the debt due by the debtor to Government.

Notice to Collector,  
co-operative  
societies, Registrar  
and local authorities.

(2) The Board shall also give a similar notice to any *local authority, co-operative society or scheduled bank* to which or to whom any debt may be due by the debtor and also to any person who is entitled to maintenance from the debtor, under a decree or order passed by a competent court. In the case of any debt due to a co-operative society the Board shall also give notice to the Registrar of Co-operative Societies or to such officer as the Registrar may nominate in this behalf.

(3) On the receipt of such notice the Collector, *the local authority, the co-operative society or the scheduled bank* or the person entitled to maintenance, as the case may be, shall, for the purposes of enabling the Board to determine the paying capacity of the debtor under section 51, within the time prescribed, intimate to the Board the total amount of the debt due by the debtor as also any recurring liability against such debtor in respect of such debt.

(4) *The Collector, the co-operative society and the scheduled bank* shall intimate to the Board the amount of remission which *the Provincial Government, the co-operative society or the scheduled bank* as the case may be, is willing to give in respect of the debt.

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\* The words printed in italics in sub-sections (2), (3), (4) and (5) of this section were substituted by S. 20 (i), (ii) (iii) (a) and (b) and (iv) respectively of Bom. Act VIII of 1945 for the following words in the respective sub-sections, namely:—

- (2) "*Co-operative society or any local authority*";  
(3) "*The co-operative society or the local authority*";  
(4) (a) *The Collector and the co-operative society*";  
b) "*The Provincial Government or the co-operative society*";

(5) It shall not be lawful to *the Provincial Government, the co-operative society or the scheduled bank* to reduce the amount of remission intimated to the Board under sub-section (4).

#### COMMENTARY

*Scope of the section*:—It may be recalled that S. 3 of this Act exempts from the operation of the remedial sections of this Act, so far as they relate to the adjustment of the debts of a debtor, *i. e. to say*, SS. 17, 31 to 34, 38 to 45, 52, 53 and 55, debts due from a debtor to (1) the Local Government, (2) local authorities (3) co-operative societies, (4) Scheduled banks and (5) persons who had advanced money to him solely for the purpose of financing of crops after the relevant date and (6) persons who had obtained a decree or order of maintenance against him from a competent court. The Board need not therefore know the amounts of such debts while determining the amounts due to the other creditors of the debtor according to the provisions of SS. 38 to 46. But while taking the further steps that the Board is required to take towards the liquidation of the debts so ascertained, which are provided for in SS. 48 to 54, it should be well-posted with information as to what are the liabilities of the debtor which it cannot touch and which are entitled to priority over the debts which it has to adjust. Therefore it has been provided in S. 22 (3) that the statements to be filed under sub-sections (1) and (2) of the section shall contain the amounts and particulars of all such debts as well, “notwithstanding anything contained in S. 3.” These amounts and particulars are also required to be given in the statements to be filed after notice under S. 31. The amounts and particulars supplied by the parties by those statements may or may not however be correct. Moreover the Legislature expected the Local Government and co-operative societies to which the debtor may be indebted to make some sacrifice voluntarily as the other creditors, except the local authorities and persons who had obtained decrees or orders for maintenance from competent courts, were to be compelled to make

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(5) “*The Provincial Government or the co-operative society*”.

by virtue of the special provisions of this Act, especially that as to the arbitrary reduction of the amounts of principal and interest due to them even after the rates of interest were cut down and even though decrees may have been passed for those amounts by competent courts on a scrutiny of the accounts according to the provisions of the law in force at the time of passing such decrees. The members of the Legislative Assembly representing the other interests, especially those of labour and the rural population of the province, insisted upon the elimination of all the exemptions contained in S. 3 altogether.<sup>1</sup> But the Government of the Day would not agree to its elimination and expressed confidence in the good sense of the Government that may be in power at the time when the Act may be put into operation and the permanent local officers and the managing bodies of the co-operative societies, which are under the control of the Registrar of Co-operative Societies and Rural Development Officer and prevailed upon the opposing members to agree to the section as at present worded. Thus it is that this section is found here in the Act in the present form, especially sub-sections (4) and (5) thereof.

The inclusion of the scheduled bank both in S. 3 and sub-sections (2) to (5) was made by S. 20 of Bom. Act VIII of 1945 (see the footnote below the section).

*Marginal note to this section:*—The marginal note did not naturally contain a mention of the scheduled bank prior to such amendment. It should have been amended along with the section but it has not been. It therefore ceases to be an accurate guide to the provisions of the section.

*Sub-section (1):*—This casts upon the Board a duty to give notice to the Collector of the district to inform it within the prescribed time as to the amount of the debt due by the debtor to Government.

*Sub-section (2):*—This sub-section casts on it a duty to give a similar notice to any local authority, co-operative society or scheduled

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1. See *Debates of the Bombay Legislative Assembly, 1939*, Vol. VII, pp. 1285-1309.



bank to which any debt may be due by the debtor, to the person to whom he may be indebted under a maintenance decree of or order of a competent court and in the first case also to the Registrar of Co-operative Societies or to any other officer nominated by him in this behalf.

*Sub-section (3):*—The officers and persons referred to in sub-sections (1) and (2) are by this section required to intimate to the Board within the prescribed time the total amount of debt due by the debtor to each respectively and also the recurring liability of the debtor in respect of such debt such as that of paying particular instalments from time to time.

*Sub-sections (4) and (5):*—Sub-section (4) casts a duty on the Collector of the district, the co-operative society and the scheduled bank so served with notices further to intimate to the Board how much remission the Provincial Government, the society or the bank is prepared to make out of the amount due from the debtor and sub-section (5) further provides that once the intimation is given, neither the said Government nor the society nor the bank will have the power to reduce the amount of remission communicated to the Board.

It can be expected, though it is not provided, that they would make remissions on the same lines as are laid down in respect of the debts due to other creditors in S. 42 (2) (e) (i) and S. 52 and that they would also apply the provisions of S. 42 (2) (g) to the amount of interest, if any, due to them.

It should be noted that the local authorities and the persons who hold maintenance decrees or orders against the debtor are exempted from the duty to make any remission from the amounts respectively due to them and that crop-financiers, though not liable to be served with a notice under S. 47, are under S. 3 exempted from the operation of SS. 17 and others if they had financed crops after 1-1-39, or the date of establishment of the Board concerned, as the case may be.

It should also be noted that though this section is thus placed between those for taking accounts and those relating to the determination of the paying capacity of the debtor, the Board is required to give notice as prescribed by it on receipt of an application under

S. 17. This is as it should be because the Collector, and the Registrar of Co-operative Societies would require a reasonable amount of time for obtaining the orders of the sanctioning authorities. The Boards would therefore be well-advised to issue and send for service the notices under this section along with those under S. 31 so that by the time the accounts of the other creditors are settled, replies from the officers and others served with notices under this section may be received and further delay on that account may be avoided.

48. The Board shall in the manner hereinafter provided determine :—

Board's duty to determine the particulars, value etc., of the property.

- (1) the particulars of the property belonging to the debtor,
- (2) the value of the said property.
- (3) the particulars of any alienations of or incumbrances on the said property,
- (4) the paying capacity of the debtor.

### COMMENTARY

*Scope of the section* :—This section imposes in very general terms a duty on the Board to determine in the manner provided hereafter the particulars and value of the property belonging to the debtor, the particulars of any alienations made of or incumbrances created on such property and his paying capacity. This determination is necessary for enabling the Board to decide whether the debts due by him should or should not be scaled down as provided in SS. 52 *infra* and if so, to what extent.

The provisions as to the determination of the value of the property are found in S. 50, those as to the determination of alienations or incumbrances in S. 49 and those as to the determination of the debtor's paying capacity in S. 51 *infra*. It is not however clear which provisions as to the determination of the particulars of the property are referred to in this section and what those particulars are. Such as the parties could have supplied must be before the Board as

contained in the statements filed in the prescribed forms according to the provisions of SS. 22 and 31 and further necessary ones must have been gathered on examining parties and witnesses and calling for further statements, documents, etc., under SS. 33 and 34. The provisions in those sections could not have been referred to in clause (1) because the direction contained in the section is "shall in the manner *hereinafter* provided determine". The said clause is therefore of doubtful import and very probably superfluous so far as I can see. Perhaps some one else may see its propriety.

49. Any alienation of property made or any incumbrance created thereon by a debtor with intent to defeat or delay any of his creditors shall be void for the purposes of this Act and shall be declared to be so by the Board.

Fraudulent alienations or incumbrances.

Nothing in this section shall impair the rights of an alienee or the holder of an incumbrance in good faith and for consideration.

### COMMENTARY

*Scope of the section* :—This section has been enacted in order to protect the creditors against alienations made or incumbrances created with the deliberate object of defeating or delaying them. The first paragraph thereof enacts that such transfers shall be void and casts a duty upon the Board coming to know of them to declare them to be so. It must be borne in mind that the word there being "property" it is applicable both in the case of immovable property and movable property and that no time having been specified therein, the period for which the alienation or incumbrance may be in existence would be immaterial. The second paragraph thereof declares inviolate the rights of an alienee or a holder of an incumbrance in good faith and for valuable consideration. Here it should be noted that both the conditions as to the existence of good faith and consideration must be fulfilled in order that a case may fall under

the saving-clause and that the word "consideration" here is not qualified by the adjective "valuable". Hence considerations of natural love, matrimony, valuable service, etc., must be deemed to satisfy the second condition. Naturally however even in such a case strict proof of good faith would be required. Hence even where there is proof of valuable or any other consideration but there is also proof of an intent to defeat or delay creditors, the case must be deemed to fall under paragraph 1 which makes no distinction between transfers for and transfers without consideration, valuable or otherwise.

*Analagous law* :—Although this section bears some analogy to S. 53 of the *Transfer of Property Act, 1882*, there are important points of distinction between them which deserve to be noted here. They are :—

(1) Section 53 of the *T. P. Act* relates to all kinds of "transfer" which is a wider term as defined in S. 5 of that Act while this section relates only to the specific kinds of transfer mentioned therein.

(2) That section relates to transfers of "immovable property" only while this relates to the transfer of all kinds of "property".

(3) That section contemplates transfers made not only to defeat or delay creditors, as this section does, but also those made with intent to defraud prior or subsequent transferees for consideration of the property transferred, or co-owners or other persons having an interest in the property.

(4) That section makes the transfers contemplated by it only "voidable at the option of any person so defrauded or delayed" while this section declares them to be void and casts a duty on the Board coming to know of any such to declare it to be so.

(5) The second paragraph of that section contains a rule of evidence authorising the court to draw a presumption that the transfer must have been made with the kind of intention required by the first paragraph if the effect thereof is "to defraud, defeat or delay any such person" and if it is made gratuitously or for a

grossly inadequate consideration whereas this section contains no such rule of evidence. The decision of the Board would therefore depend wholly on the evidence before it.

The saving-clause in both is the same except for the change necessary on account of the specific kinds of transfer declared void under this section.

(2) There is also some similarity between the provisions of this section and those of S. 53 of the *Provincial Insolvency Act, 1920* but there are points of distinction also between them. They are :—

(1) S. 53 of the *P. I. Act* is applicable to all cases of transfer but this section applies to the specific cases of transfer mentioned therein ;

(2) For the applicability of the former the transferor must have been adjudged in insolvent on a petition presented within 2 years after the date of transfer whereas for that of the latter the conditions are (a) that the transferor must be a debtor and (b) that he must have made any of the specific kinds of transfer with a view to defeat or delay any of his creditors ;

(3) Under the former the receiver has got to move the court to exercise the power vested in it by it whereas under the latter the Board can act even *suo moto*.

(4) The former makes exceptions of the cases of a transfer made before and in consideration of marriage and that made in favour of a purchaser and an incumbrancer *in good faith and for valuable consideration* whereas this section makes an exception only of the case of an alienee or the holder of an incumbrance *in good faith and for consideration*.

50\*. The value of the property and other assets of the debtor shall for the purpose of ascertaining the paying capacity of a debtor under section 51 be determined by the Board as follows :—

Value of property of debtor to be determined by the Board in prescribed manner.

(1) In determining the value of the property or assets of a debtor, the property or assets which are exempt

from attachment in execution of a decree of a civil court  
V of 1908. under the *Code of Civil Procedure, 1908*,  
shall not be taken into account.

(2)\* *In determining the value of the property or assets of a debtor the amount of the debts mentioned in section 3 shall be deducted.*

(3\*) + + + +

(4) In the case of lands to which section 73A of the  
Bom. V of 1879. *Bombay Land Revenue Code, 1879* applies  
the market value of such lands shall be calculated as if the restriction on the transfer of such lands provided by the said section was not in operation :

Provided that nothing in this paragraph shall be deemed to provide that such lands shall be transferable without the permission of the Collector under the said section.

(5) Subject to the provisions of the above paragraphs the Provincial Government may by rules prescribe the manner in which the market value of the property and assets of the debtor shall be determined.

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\* Paragraph (2) of this section which has been printed in italics was substituted by S. 21 of Bom. Act VIII of 1945 for the original paragraphs (2) and (3) which were as follows :—

(2) *In determining the value of the immovable property of a debtor which is subject to the liability of secured debts deduction shall be made from such value in respect of the amount of the debts due to Government and to local authorities which, under any law for the time being in force, are a charge on such immovable property or are recoverable from the debtor as dues of the current year's land revenue.*

(3) *In determining the value of the property which is not subject to the liability of secured debts the amount of the debts mentioned in section 3 except debts due to Government and to local authorities referred to in paragraph 2 above shall be deducted.*

## COMMENTARY

*Scope of the section* :—This section prescribes certain principles for observance by the Board while determining the value of the property and assets of the debtor for the purpose of ascertaining his paying capacity as required by S. 48 and empowers the Provincial Government to prescribe rules for determining the market value of the said property and assets.

The said principles :—(1) *Paragraph (1)* :—No notice should be taken of the property and assets which are exempt from attachment in the execution of a decree of a civil court under the *Code of Civil Procedure, 1908*.

This exemption is contained in clauses (a) to (p) of the proviso to sub-section (1) of S. 60 of the *Code* read along with its Explanation. Thereout the clauses that are likely to be of use in the case of an agriculturist-debtor are :—(a), (b), (c), (p) and perhaps in some cases clauses (d), (e), (f) and (l) read with the Explanation thereof.

(2) *Paragraph (2)* :—The total amount of all the debts mentioned in S. 3 should be deducted.

This substitutes a very simple principle for the complicate ones contained in the original paragraphs (2) and (3) which will be found in the foot-note below the section. They required the debts mentioned in S. 3 to be divided into two groups, the first comprising the debts due to Government and the local authorities and the other the others mentioned in that section. Out of the former again those only were to be deducted which were legally a charge on the debtor's immovable property or were recoverable from him as the current year's land revenue. This deduction was to be made from the value of the property subject to the liability of secured debts. The amount of the other group of debts was to be deducted from the value of the property not subject to such a liability. No grouping and no distinct deductions need be made now,

(3) *Paragraph (4)* :—If the debtor happens to be the occupant of any piece of land to which S. 73A of the *Bombay Land Revenue Code, 1879* is applicable, its market value should be assessed as if that section were not applicable to it. The proviso to this paragraph makes it clear that this section should not be construed to confer the power of transfer of the land without the permission of the Collector, which is required by the said section of the *Bom. L. R. Code*.<sup>1</sup> This clarification has become necessary because subsection (2) of that section has empowered the Local Government to exempt *inter alia* “any person or class of persons from the operation of this section” and therefore it is likely that the main provision in this paragraph may be construed into an implied sanction to agriculturist debtors to transfer such lands.

*Paragraph (4)* :—This paragraph authorises the Provincial Government to prescribe the manner in which the market value of the property and assets of a debtor should be ascertained for the purpose of determining his paying capacity. It should however be noted that the said paragraph has granted the said authority subject to the provisions of the preceding paragraphs of this section. Therefore if in practice it is found that any act proposed to be done under a rule made under this section is inconsistent with the provision of any of the preceding paragraphs of this section that act cannot be done; in other words where there is a conflict between the provisions of any of the said paragraphs and any part of such rule the provisions of the paragraph should be given effect to in preference

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1. The said section of the *Bom. L. R. Code, 1879* runs thus :—

73A. (1) Notwithstanding anything in the foregoing section, in any tract or village to which Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) Government may, by notification in the *Bombay Government Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section,



to the part of the rule, because the authority given to the Provincial Government by this paragraph is exercisable subject to the provisions of the preceding paragraphs. For the rule made under this paragraph see Rule 28 in the relevant Appendix.

51. The paying capacity of the debtor, if any, shall, for the purposes of this Act, be deemed  
Paying capacity. to be the aggregate amount consisting of the following items :—

- (a) if the amount of the secured debts of a debtor found due on taking account under this Act is less than *sixty* per cent. of the value of his immovable property as determined under section 50, but such debts are secured, the difference between the amount of such debts and *sixty* per cent. of the value of such property ;
- (b) *sixty* per cent. of the value of the immovable property of the debtor which is not subject to the liability of secured debts as determined under section 50 ;
- (c) *sixty* per cent. of the value of other assets :

Provided that when any portion of such assets yields income but the market value of such portion cannot be determined, the value of such portion shall be the amount of the income capitalised at six per cent. per annum.

#### COMMENTARY

*Scope of the section* :—This section lays down which items are to be taken into consideration for the purpose of determining the paying capacity of the debtor, which it is necessary to know for

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\* The word *sixty* was substituted by S. 22 of Bom. Act VIII of 1945 for the figure 80 and the word *eighty* wherever they occurred in this section.

giving effect to the provisions of S. 52 *infra*. It draws a distinction on the one hand, between immovable property subject to the liability of secured debts and that not subject to such liability and on the other, between immovable property as a whole and the other assets of the debtor, which may comprise specific movable property, cash, if any, and outstandings under book-accounts, promissory notes, bonds, hundis, contracts, oral or written, *Hathettas*, etc., or in respect of hand-loans, goods etc., and lays down the standards to be applied to each such kind of property. Underlying all of these there is one general standard that the paying capacity of a debtor is sixty per cent, of the net value of his property and other assets.

*Clause (a) :—*This clause provides that if the amount of the secured debts of a debtor as ascertained on taking an account according to the foregoing provisions of this Act falls short of the value of his immovable property taken as a whole, as determined under S. 50, his paying capacity so far as such property is concerned is to be taken to be that represented by the difference between 60% of the value and the amount of the secured debts.

*Illustration :—*This means that if the immovable property of a debtor is found to be worth Rs. 5,000 according to the provisions of S. 50 and the total amount of his secured debts as ascertained under the provisions of SS. 38 to 46 is Rs. 3,000, nothing would be left to be considered under this item because out of the aforesaid value only Rs. 3,000 is to be taken into consideration but if the amount of his secured debts is Rs. 2,000, then Rs. 1,000 is to be put down as the extent of the man's paying capacity so far as the immovable property belonging to him but burdened with debts is concerned.

*Clause (b) :—*This clause provides that if the debtor has any immovable property not burdened with any debt or if the whole of such property of his is free from any encumbrance, then his paying capacity is to be understood to be that represented by 60% of the value of that particular property or 60% of the value of the whole of his such property as ascertained under S. 50. This is I think a simple direction and needs no further explanation.

*Clause (c)* :—The same rule as is mentioned in clause (b) is made applicable to the case of the other assets of the debtor, which term means all the property other than immovable property and comprises all the different species above-explained. In their case also the paying capacity is fixed at 60% of their value determined under the relevant rule. This clause is supplemented by a proviso to the effect that when it is found that the assets of a debtor consist of an item which yields any income but whose market-value cannot be determined according to the prescribed rule, then the value of such item shall be held to be the amount of the income capitalised at interest at six per cent. per annum.

*Illustration* :—It would be well to explain this direction by an illustration. Suppose that there is an item of income of a debtor yielding an annual income of Rs. 30 but its market-value cannot be ascertained by the Board with the evidence at its command in the exercise of its general discretionary power. In such a case this proviso will have to be made use of and the market value of that item will have to be held accordingly to be Rs. 500, which is the amount of that income capitalised at 6%, i. e. to say, the amount which if invested at simple interest at 6% per annum would yield an annual income of Rs. 30. On the same basis if the income is Rs. 60 p. a. the market value of the property yielding that income would be Rs. 1,000, if the income is Rs. 15 only, such value would be Rs. 250 and so on.

52\*. (1) Notwithstanding any law, custom, contract or decree of a court to the contrary, all debts payable by a debtor at the commencement of this Act shall be scaled down in the manner hereinafter provided.

Debts payable by debtors to be scaled down.

*Provided that in relation to a Board established after the commencement of the Bombay Agricultural Debtors Relief (Amendment) Act, 1945, this* Bom. VIII of 1945, *sub-section shall be construed as if for the*

\* The proviso to sub-section (1) was added by S. 23 (1) of Bom. Act VIII of 1945 and the word "sixty" was substituted for the word "etghty" wherever it occurred in sub-sections (3) and (4) by S. 23 (2) of the said Act.

words "at the date of commencement of this Act" the words "at the date of establishment of the Board concerned" were substituted.

(2) If all the debts due by a debtor are unsecured, such debts as are found due on taking accounts under this Act shall be scaled down *pro rata* to the value of the paying capacity of the debtor.

(3) If all the debts due by a debtor are secured debts, and the total amount of such debts found due on taking accounts under this Act is more than *sixty* per cent. of the value of the property belonging to the debtor, such debts shall be scaled down *pro rata* to *sixty* per cent. of the value of such property.

(4) If the debts due by a debtor are both secured and unsecured, and if the total amount of the secured debts found due on taking accounts under this Act is more than sixty per cent. of the value of the property on which such debts are secured, the secured debts shall be scaled down *pro rata* to *sixty* per cent. of the value of the property on which such debts are secured and the unsecured debts shall be scaled down *pro rata* to *sixty* per cent. of the value of the other property belonging to the debtor over which no debts are secured.

### COMMENTARY

*Scope of the section* :—The next step to be taken by the Board after the paying capacity of the debtor is ascertained is to compare it with his liabilities both secured and unsecured and to apply to them *pro rata* that principle of scaling down out of the three laid down in sub-section (2) to (4) of this section which may be applicable to that particular case. Sub-section (1) thereof contains only a general direction for making an application of the principle which may be found suitable in each case.

*Sub-section (1) together with the proviso :—*It may be noted that according to this sub-section, as worded, any of the provisions of sub-sections (2) to (4) which may be applicable is to be applied to all debts which may be payable by a debtor at the date of commencement of the Act in the case of applications under S. 17 made to the Boards established prior to the commencement of the operation of Bom. Act VIII of 1945 *i. e.* 21st April 1945 and those payable by him at the date of establishment of the Board concerned in the case of applications under that section made to the Boards established thereafter and that this is to be done in total disregard of any law, custom contract or decree of a court to the contrary.

*Sub-section (1) Considered along with sub-sections (2) to (4) :—*From such a drastic wording it might be inferred that scaling down under this section is compulsory in all the cases coming before the Boards. It is not so however. This can be inferred from the fact that the operative sub-sections are so worded that several classes of cases would not fall under any of the rules at all. Thus, for instance, take the case of a debtor found to be indebted in the total unsecured sum of Rs. 4,000 and to be owning property, which under the provisions of S. 51, has been found to limit his paying capacity to Rs. 8,000. In such a case sub-section (2) can have no operation because 60% of Rs. 8,000 is Rs. 4,800 while the total of the unsecured debts is Rs. 4,000 and to equate it to 60% of the paying capacity means to scale it up rather than scale it down. The same would also be the case if the paying capacity is limited to Rs. 6666-10-8 for in such a case, 60% of it comes to Rs. 4,000, which is also the total amount of the unsecured debts found payable on the relevant date. Similarly take the case of a debtor having the liability to pay secured debts only. Here the determining factor is not his paying capacity but the value of his property, not simply that by which the debts are secured but all property movable as well as immovable. If the total amount of such debts is equal to or less than the said value, no question of scaling down arises. Lastly take a case falling under sub-section (4), *i. e.* to say, of a debtor having got to pay both secured and unsecured debts. Here the determining factor is the value

of all his property on which his secured debts constitute a burden. If the total of the secured debts is equal to or less than 60% of that value no case of the scaling down of either the secured or the unsecured debts can be deemed to arise. The direction contained in sub-section (1) together with the proviso must therefore be deemed to cover those cases only in which the necessity for a scaling down of the debts arises either because they being totally unsecured exceed 60% of the paying capacity of the debtor or being either secured alone or partly secured and unsecured the total amount of the secured debts exceeds 60% of the value of the whole of the debtor's movable and immovable property in a case falling under sub-section (3) and 60% of that on which the secured debts constitute a burden in that of one falling on under sub-section (4).

*Difference between the paying capacity of a debtor and the value of his property:*—The difference between the paying capacity of the debtor which is to be taken into consideration when his debts are all unsecured and the value of his property which is to be taken into consideration when his debts are either wholly secured or partly secured and partly unsecured is a substantial one because whereas the value of a property is to be determined according to the provisions of S. 50 (5) and the rules made thereunder, bearing also in mind the provisions of S. 50 (1), (2) and (4), the paying capacity of a debtor is the aggregate of the items mentioned in clauses (a), (b) and (c) of S. 51 and although where a debtor has not to pay any secured debts the item mentioned in clause (a) is not one of those to be considered, those mentioned in clauses (b) and (c) are 60% of the value of the debtor's immovable property and 60% of the value of his other assets respectively, both as determined under the provisions of S. 50 and the rules made under sub-section (5) thereof. The effect of this distinction will be realised when we compare the results arrived at by the application of the directions contained in sub-section (2) and sub-sections (3) and (4) in the above illustration. When the total of the unsecured debts, which alone are payable, is Rs. 4,000, the case goes out of the purview of sub-section (2) only when the paying capacity of the debtor is found to be at least Rs. 6,666-10-8.

But in order that he may have so much paying capacity he must be owning property valued under S. 50 and the rules made thereunder at Rs. 11,111-1-9½ because that capacity is to be taken under S. 51 to be 60% of value of the immovable property and of the other assets. When however, the debts amounting in all to Rs. 4,000 are wholly secured the case would go out of the purview of sub-section (3) if the value of the whole of the debtor's property, is Rs. 6,666-10-8, 60% of which comes to Rs. 4,000. Lastly, if the said total of Rs. 4,000 is made up partly of secured and partly of unsecured debts, irrespective of the proportion which they bear to each other, no case for scaling down of either the secured or the unsecured debts can arise if the value of the property on which the secured portion constitutes a burden is Rs. 6,666-10-8 because 60 % of that amount is equal to the total of both the secured and unsecured debts. Not only that but no such case can arise so long as the amount of the secured debts, which alone is to be considered under sub-section (4) does not exceed 60% of the value of the property on which they are secured. Thus it is enough to take the whole case of secured and unsecured debts out of the purview of the said sub-section if in the above illustration the total of Rs. 4,000 is made up of Rs. 3,500 of the unsecured debts and only Rs. 500 of the secured debts and the property on which the latter are a burden is found to be of the value of at least Rs. 833-5-4 as ascertained under the provisions of S. 50 and the rules made thereunder.

This is the result of the application of the rules laid down in sub-sections (2) to (4) of this section according to the plain and unequivocal wording thereof. It is immaterial whether the legislature intended it to be so or not.

*Changes in the law :—*It will appear on a reference to the foot-note below the section that the only changes made in the wording of this section are :—(1) the addition of the proviso to sub-section (1), and (2) the substitution of the word "sixty" for the word "eighty" wherever it occurred in sub-sections (3) and (4).

The first was absolutely necessary because many new Boards were established in 1945 and many more are likely to be established

in future although the Act commenced to be in operation wholly in certain areas and partially throughout the province since January 1942.

The second change is in a line with that made in S. 51 and seems to have been considered necessary because the heavy rise in the prices of the necessities of life, which has commenced since 1943, has rendered the margin of 20% inadequate to provide for the necessary means of sustenance to the agricultural debtors even while devising a way for the discharge of their existing liabilities, bit by bit.

N. B. For a statutory exception to S. 52 see S. 56 of this Act.

53. (1) The amount of debts so scaled down shall for the purposes of this Act be deemed to be the amount due by the debtor in respect of the said debts.

No recovery  
of amount in ex-  
cess of debts  
scaled down.

(2) No sum in excess of the amount of debts so scaled down shall be recoverable from the debtor or from any property belonging to him, nor shall the debtor be liable to arrest nor shall his property be liable to be attached, sold or proceeded against in any manner in execution of any decree or order against him in so far as such decree or order is for an amount in excess of the amount scaled down under this Act.

#### COMMENTARY

*Scope of the section* :—This section lays down the legal effects which are to follow from the application of the process of the scaling down of debts prescribed by the preceding section. It is divided into two sub-sections, the first of which lays down its effects so far as proceedings under this Act are concerned, and the second so far as all other civil proceedings that could be resorted to for the purpose of the recovery of the debts due from the debtor at all times under the provisions of any other law, are concerned.

*Sub-section (1)* :—This sub-section says that the amount of debts scaled down as provided in S. 52 shall be taken to be the amount



due from the debtor in respect of the said debts for the purposes of this Act.

This means that once a Board has taken accounts as provided in SS. 38 to 46, determined the value of his property and his paying capacity, if necessary, according to the provisions of SS. 48 to 51, and if and in so far as necessary, scaled down his debts, no larger amount than that arrived at by that process shall be deemed to be due from the debtor for any of the purposes of this Act.

*Sub-section (2):*—And this sub-section further provides that after the Board has proceeded so far, no matter even if an award is not made under S. 54 or if made it is not executable for any reason, no creditor of the debtor whose debt has been so scaled down shall recover any amount in excess of the amount so scaled down either from the debtor personally or from his property and that even if any occasion arises for a creditor who has obtained a decree or order against the debtor for any such debt, to execute that decree or order, the debtor shall not be liable to arrest and his property shall not be liable to be attached, sold or proceeded against in any other manner in execution of such decree or order to the extent of the amount in excess of that scaled down as above.

54\*. (1) After determining the amount of debts scaled down in the manner provided in section 52, the Board shall, *save as otherwise provided in section 55*, make an award.

Award.

(2) The award shall be in the prescribed form and shall include the following particulars :—

- (a) a list of the properties of the debtor both movable and immovable with particulars of any mortgage, lieu or charge subsisting thereon ;
- (b) particulars of all debts secured and unsecured which have been scaled down in accordance with

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\* The words in italics in sub-section (1) or this section were inserted by S. 2 of Bom. Act II of 1946.

section 52 together with the details of the properties on which secured debts are charged :

Provided that the amount of the secured debts so scaled down shall be charged on the properties on which they may have been secured and the amount of unsecured debts shall be charged on the remaining property of the debtors :

Provided further in the case of debts in respect of which a settlement has been reached and certified, the amount of debts shall be as agreed to in the said settlement ;

- (c) particulars of all debts of the kind specified in section 3 ;
- (d) particulars of any alienation or incumbrance declared to be void under section 49 ;
- (e) the amount to be paid to each creditor for each debt due to him ;
- (f) the manner in which and the times at which the amounts referred to in clauses (b) and (c) shall be paid ;
- (g) the priority in which the debts shall be paid ;

Provided that in fixing the priority the following order shall be followed :—

- (i) debts due to Government, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's land revenue,
- (ii) debts due to local authorities, which are charged on the immovable property belonging to the debtor or which are recoverable as the current year's dues,

- (iii) loans given by resource societies or by persons authorised to advance loans under section 78 for the financing of crops after the coming into force of this Act, and other loans given for financing crops after 1st January 1939 and before the date of the coming into force of this Act,
- (iv) secured debts,
- (v) debts due to Government, local authorities and other bodies including co-operative societies, and recoverable as arrears of land revenue,
- (vi) other debts due to co-operative societies,
- (vii) unsecured debts :

Provided further that in the case of debts falling under the same class their priority *inter se* shall be determined in the order of the dates on which such debts may have been incurred. If such debts are incurred on the same date, they shall be paid *pro rata* ;

(h) the instalments in which the debts shall be paid :

\*Provided that the total annual instalments shall not exceed *twelve* :

Provided further that in directing in what instalments the debts shall be paid the Board shall ascertain the net annual income of the debtor and the annual instalments payable by the debtor shall not exceed his net annual income.

*Explanation:—For the purposes of this clause the net annual income of the debtor shall mean the balance of his annual income after deducting (i) such sum as may be considered necessary for the payment of the liability, if any, imposed on the debtor under a decree or order for maintenance*

passed by a competent Court, (ii) such sum as may be considered necessary for the maintenance of the debtor and his dependents, and (iii) the sum required by the debtor to pay the assessment and taxes in respect of the current year to Government and to local authorities and to pay off loans borrowed for the purpose of financing crops.

- (i) the conditions subject to which the immovable property, if any, in possession of the creditor shall be delivered to the debtor :

Provided that the Board shall not refuse to pass an order for the delivery of possession merely on the ground that the time fixed for the payment of the secured debt has not arrived or on the ground that the secured debt has not been completely discharged or on both ;

- (j) the rate of interest, if any, payable on each amount referred to in clause (e) :

Provided that such rate shall not exceed the rate notified in this behalf by the Provincial Government not exceeding 6 per cent. per annum or any rate agreed between the parties when the debt was originally incurred or the rate allowed by the decree in respect of such debt, whichever is lowest ;

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\* The word "twelve" was substituted for the figure "25" in the first proviso to clause (h) by S. 24 (i) of Bom. Act VIII of 1945 and the Explanation to the said clause as above printed was substituted by S. 24 (ii) of the said Act for the following which was originally there, namely :—

*Explanation :—For the purposes of this clause the net annual income of the debtor shall mean the balance of his annual income after deducting such sum as may be considered necessary for the maintenance of the debtor and his dependents and the sum due by the debtor to pay the debts due to Government and to local authorities, and to pay off loans borrowed for the purpose of financing of crops ;*

(k) the property of the debtor which and the conditions subject to which such property shall be liable to be sold for the recovery of any particular debt ;

(l)\* costs, if any, to be paid by the parties :

Provided that, if an application is rejected in consequence of untrue or incorrect statement made or information supplied by the creditor the costs shall be directed to be paid by the creditor making such statement or giving such information ;

(m) the parties by whom and the manner in which the court-fees due shall be paid ; and

(n) any other matter which in the opinion of the Provincial Government may be necessary for the purpose of doing complete justice or making a complete adjustment of debts and which the Provincial Government may by rules prescribe to be included in awards.

#### COMMENTARY

*Scope of the section* :—After accounts of the dealings between the debtor and his creditors are taken as provided in SS. 38 to 46, the particulars and value of the former's property are ascertained, the fraudulent alienations made and incumbrances created, if any, by him are set aside and his paying capacity determined as required by

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\*Clause (1) of S. 54 (2) had originally two provisoes, that now printed below it being the second with the word "further" between the words "Provided" and "that". That word and the first proviso were deleted by S. 24 (iii) of Bom. Act VIII of 1945. The said first proviso was in the following terms :—

*"Provided that, where the debtor has failed to make an application under section 17 within the period of one year from the date on which a Board is established under section 4 and the creditor has made an application after such period, the whole of the costs shall be directed to be paid by the debtor ;"*

SS. 48 to 51, and his debts, secured and unsecured are, if necessary, scaled down under S. 52, the next and the last important act to be done by the Board is the passing of an award which would have the force of a decree. This section therefore provides that as the next step after the debts are scaled down, the Board shall make an award in the prescribed form and that it shall contain certain particulars and such others as the Provincial Government may by rules prescribe. It is sub-divided into two sub-sections, the particular provisions in each of which are explained below.

*Sub-section (1):*—The provision in this sub-section consists of a direction to the Board to make an award next after scaling down debts as provided in S. 52.

*Sub-section (2):*—By this sub-section the Legislature has directed that the award to be made under the preceding sub-section shall be in the form which may be prescribed and shall include the particulars specified in clauses (a) to (m) thereof and such other matters as the Provincial Government may deem necessary and may by rules prescribe in order to do complete justice between the parties and to make a complete adjustment of the debts of the debtor.

The particulars specified in clauses (a) to (m) as necessary to be included in the award relate to the following matters, namely:—

- (a) properties with the burdens, if any, thereon;
- (b) debts together with the respective properties on which they are charged subject to proviso 1 and in the case of a settlement having been effected of any of them, the amount agreed upon as required by proviso 2;
- (c) debts mentioned in S. 3;
- (d) alienations or incumbrances declared void under S. 49;
- (e) amount to be paid to each creditor for each debt due to him;
- (f) manner and time of the payment of each of the amounts mentioned in (b) and (e);

- (g) relative priority to be observed in the case of each debt, in fixing which the order mentioned in proviso 1 is to be observed in the case of different classes of debts and the principles laid down in proviso 2 in the case of those falling in the same class ;
- (h) instalments in which the debts are to be paid subject to the maximum number laid down in proviso 1, regard being had to the standard laid down in proviso 2 as regards the amount of each instalment as to which standard there is an explanation appended to that proviso ;

*Effect of the proviso and explanation read together:—*That explanation gives a special definition of the expression "net annual income of the debtor" which, according to that proviso, is the measure of the debtor's capacity to pay instalments to his creditors. According to it such income means the balance left after deducting, (1) such sum as the Board considers necessary for the discharge of the liability of the debtor, if any, under a decree or order of maintenance of a competent court, (2) such sum as may be reasonably required for the maintenance of the debtor himself and his dependents, if any, and (3) the amounts required by the debtor for paying the current year's revenue and taxes to Government and the local authorities and to pay off loans borrowed for the purpose of financing crops.

Under the explanation as it stood originally, the amount payable under a decree or order for maintenance against the debtor was not required to be deducted and on the other hand the whole of the amounts payable to Government and the local authorities was required to be deducted. Now however the former is required to be deducted and for payment to Government and the local authorities such sum only as is claimable on account of the current year's revenue and taxes ;

- (a) conditions subject to which, if any, a creditor in possession of the debtor's property is to deliver possession thereof to him, which are to be laid down on bearing in mind the proviso to this clause ;

- (j) rate at which future interest, if any, is to be paid to each creditor on the amount held payable to him in instalments, in fixing which the principles laid down in the proviso to this clause should be observed ;
- (k) property of the debtor which would be available for being sold for the recovery of each particular debt and conditions subject to which the sale should be made ;
- (l) costs, if any, to be paid by the parties in fixing the liability with regard to which the specific direction contained in the only proviso now remaining is to be followed.
- (m) names of the parties by whom and the manner in which court-fees are to be paid according to the provisions of S. 60 *infra* ;

*Clause (n) :—*This clause gives power to the Provincial Government to require particulars as to any other matters, which it may, in its discretion, consider necessary to be mentioned in an award for the sake of doing justice between the parties and for the complete realisation of the object underlying the institution of proceedings under S. 17 of this Act.

For the Rule and Form relating to this section see Rule 29 (1) and Form No. 9 together with the schedules thereto given in the relevant Appendix.

55\*. (1) *Where the total amount of the debt as scaled down by the Board under section 52 does not exceed half the value of the immovable property of the debtor and in any other case where all the creditors agree to the further scaling down of the debts under sub-section (2), after so scaling down the debts, the Board shall, unless the debtor himself pays the amount of the debt as finally scaled down and produces the creditor's receipt therefor, make an award in the prescribed*

Board to prepare a scheme for adjustment of debts through the Provincial Land Mortgage Bank.



form directing that the Primary Land Mortgage Bank situated in the local area, or if there is no such Primary Land Mortgage Bank in that local area, the Bombay Provincial Co-operative Land Mortgage Bank shall pay the creditors in cash the amount of the debt as finally scaled down or, if the creditors so desire, issue to them bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, registered under the Bombay Co-operative Societies Act, 1925, such bonds being guaranteed by the Provincial

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Government for such amount in full satisfaction of all the debts due to them from the debtor and shall be entitled to recover the amount from the debtor in accordance with the award. The Board shall further direct that such amount shall be charged on all the immovable property of the debtor. The rate of interest payable by the debtor to the Bank in such case shall be the rate notified in this behalf by the Provincial Government from time to time subject to the maximum of six per cent. per annum.

(2) Before making the award under sub-section (1) of section 54, The Board shall, where the amount of debts of the debtor as scaled down by it exceeds half the value of the debtor's immovable property as determined by it, intimate to the creditors the amount of the said debts of the debtor and the said value of the debtor's immovable property and call upon them to state in writing within a specified period whether they agree to the further scaling down of the said debts so as to reduce

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\* This section was first amended by S. 25 (1) of Bom. Act VIII of 1945 and for the second time by S. 3 of Bom. Act II of 1946. Sub-section (3) has remained unaffected by any of the said amendments. For the text of sub-sections (1) and (2) as they stood after the amendment in 1945 see the *Commentary* on this section and for that of those as they stood originally in the Act of 1939 see the foot-note below it.

*them to a sum not exceeding half the said value of the immovable property of the debtor in order to secure the benefit of sub-section (3) above.*

(3) All sums due under an award made in favour of the Bank under sub-section (2) shall be recoverable as arrears of land revenue.†

### COMMENTARY

*Scope of this section :—*This section provides for a kind of relief not recommended by any of the advisory bodies which had made the necessary investigations and prepared the ground for the provincial debt legislation which commences from 1933. Such a relief is therefore not found provided for by the legislature of any other Province except Bombay.

It provides that in all cases in which the total amount of the debts found due by a debtor at the foot of an account made up under the provisions of SS. 38 to 46 is equal to or less than 50% of the value of his immovable property as ascertained under the provisions of S. 50 and the rules made thereunder the Board shall instead of proceeding to make an award under S. 54 (1), make one directing that the Primary Land Mortgage Bank in the local area for which the Board may have been established and in its absence the Bombay Provincial Co-operative Land Mortgage Bank shall pay to the creditors of the debtor the amount of the debt, as scaled down, in cash, or, if the creditors so desire, pass to them bonds for the said amount and shall recover from the debtor the said amount with interest at such rate not exceeding 6% p. a. as may be notified from time to time by Government, holding the whole of the immovable property of the debtor as a security for the repayment thereof. The Bank can make the recovery as arrears of land revenue. This is an entirely new provision made by the amending Act of 1946.

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† This section as it originally stood in the Act of 1939 had a further sub-section after sub-section (3) but it was deleted by S. 25 (2) of Bom. Act VIII of 1945. It had been worded as follows :—

(4) *Notwithstanding anything contained in this Act, no appeal shall lie against an award made under sub-section (2).*

For those cases in which the total amount of the debts due by the debtor as scaled down are more than 50% of the value of his immovable property as determined by the Board, the section provides that the above kind of award shall be made only after the creditors are informed of the amount of the debts and the value of the property and if they agree in writing to a further scaling down of the debts to a sum not exceeding 50% of the value of the debtor's immovable property. Such a provision already existed in the Act as amended in 1945 with the exception of that for payment in cash or bonds at the option of the creditors which was made by the Act of 1946 only. For the knowledge of the readers I give below the full text of sub-sections (1) and (2) as they stood after the amendment made therein by Bom. Act VIII of 1945 and in the foot-note thereunder that of those as they stood prior to the said amendment.

- 55\*. (1) *Before making the award under sub-section (1) of section 54, the Board may intimate to the creditors the amount of debts of the debtor as scaled down by it and the value of the debtor's immovable property as determined by it and may call upon them to state in writing whether they agree—*
- Board to prepare a scheme for adjustment of debts through the Provincial Land Mortgage Bank. Bom. VII of 1925.
- (a) *to the further scaling down of the debts so as to reduce them to a sum not exceeding half the value of the immovable property of the debtor, and*
- (b) *to receive in lieu of all the debts due to them from the debtor bonds issued by the Bombay Provincial Co-operative Land Mortgage Bank, registered under the Bombay Co-operative Societies Act, 1925, or by such other Bank as may be specified by the Provincial Government by a notification in the Official Gazette, such bonds being guaranteed by the Provincial Government and being equivalent in value to the sum referred to in clause (a) of this sub-section.*
- Bom. VII of 1945.

(2) *If all the creditors agree to such further scaling down of the debts and to receive such bonds, the Board shall prepare a scheme for the adjustment of the debts accordingly and shall send the scheme for acceptance to the Primary Land Mortgage Bank situated in the local area or if there is no such Primary Land Mortgage Bank in that local area, to the Bombay Provincial Co-operative Land Mortgage Bank. If the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, as the case may be, agrees to accept the scheme, the Board shall make an award in the form prescribed directing that the sum equal to the amount of the bonds shall be charged on all the immovable property of*

of the debtor and the bonds for the amount referred to in sub-section (1) shall be issued to the creditors in full satisfaction of all the debts due to them from the debtor.

*Sub-section (1) :—*This sub-section contains a general provision for making an award differing from that provided for in S. 54 (1). It is intended to be made use of in 2 classes of cases as a matter of duty and in a third class of cases if a certain condition is fulfilled and after a certain procedure has been gone through. The first two classes are :—(1) that of cases in which the total amount of debts as scaled down is less than what would be equal to 50% of the value of the immovable property of the debtor as ascertained by the Board and (2) that of those in which such amount is equal to the latter. The class of cases in which a condition is required to be fulfilled is that of those in which such amount exceeds the latter. The condition to be fulfilled in their case is that the creditors concerned should, on being apprised of the situation as known to the Board, agree in writing to a further scaling down

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\* Sub-sections (1) and (2) of this section as printed above were substituted by S. 25 (1) of Bom. Act VIII of 1945 for the following, namely :—

(1) *Before making the award under sub-section (1) of section 54 the Board may call upon the creditors to state in writing whether they agree :—*

(a) *that all the debts of the debtor should be so further scaled down as to be reduced to a sum not exceeding half the value of the immovable property of the debtor; and (b) that they shall receive in lieu of all the debts due to them bonds issued by the Bombay Provincial Land Mortgage Bank registered under the Bombay Co-operative Societies Act, 1925, or by such Bank as may be specified by the Provincial Government by a notification in the Official Gazette, such bonds being guaranteed by the Provincial Government and being equivalent in value to the sum referred to in (a).*

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(2) *If all the creditors agree to the aforesaid conditions, the Board shall prepare a scheme for the adjustment of the debts accordingly and shall send the same to the said Bank for acceptance. If the said Bank agrees to accept the proposal, the Board shall make an award in the form prescribed directing that the sum so scaled down shall be charged on all the immovable property of the debtor and the bonds for the amount referred to in sub-section (1) shall be issued to the creditors in full satisfaction of all the debts due to them from the debtor.*

to a sum not exceeding 50% of the value of the immovable property of the debtor as determined by the Board and the procedure to be followed is that the scaling down must be actually made and placed on the record.

The creditors are given the option in all the above cases whether to accept payment of the amount in cash or government-guaranteed bonds providing for the payment of the amount either in one sum after some period or in instalments payable on certain future dates, and in each case interest not exceeding 6% per annum as may be notified from time to time by the Provincial Government.

The bank making the payment or passing the bonds would be the Primary Land Mortgage Bank in the local area, if any, or the Bombay Provincial Co-operative Land Mortgage Bank. The Board is directed to create by the award a charge for the amount so paid or promised to be paid on the whole of the immovable property of the debtor and to provide therein for the recovery of the amount in certain instalments from the debtor, as arrears of land revenue. Of course if the debtor himself pays up the debts and produces a receipt obtained from the creditors, the Board has not to make an award at all.

The special advantage to be gained by a debtor by the operation of this section, wherever it is possible, is that the relation between him and his old creditors ceases to exist from the date of the making of the award and the Bank which pays the amount in cash or passes a bond therefor becomes his creditor. Although it means the substitution of one creditor for another or others, it means considerable relief to the debtor because the bank, whether it is the Primary Land Mortgage Bank or the Bombay Provincial Co-operative Land Mortgage Bank, is governed by the provisions of the *Bombay Co-operative Societies Act, 1925* and is, as such, bound to conform to certain rules and bye-laws made under the said Act and approved by Government.

The creditors too, whose debts fall under the first two classes, would, I believe, appreciate immediate payment or a single payment after a certain period or payment in fixed periodical instalments

with interest at a rate which would not be less than 3 and more than 6% p. a. because it would enable them to invest the money so recovered in more profitable ventures which are bound to come into existence in the rural areas with the development of feeder roads and the augmentation of transport facilities. Although it appears that the Government hopes that even those creditors whose debts fall in the third class would be inclined to take advantage of this section and has therefore retained the original provision which depends for its operation on their consent in writing, I myself feel very doubtful whether that hope will be fulfilled because it is highly improbable that creditors, the accounts of whose dues have been made up on the application of the principles embodied in SS. 38 to 49 and which have been scaled down thereafter as provided for in S. 52, would agree, and that too in a body without exception, to a further scaling down as required.

*Sub-section (2) :—*This sub-section lays down the condition which must be fulfilled before an award can be made in the case of those debtors the total amount of whose debts exceeds 50% of the value of their immovable properties as determined by the Board. The condition is that the creditors of each debtor, on being apprised of the total amount of debts due by the debtor and the value of his immovable property determined by the Board, and called upon as a body, to give their consent in writing to a further scaling down of the debt to a sum not exceeding 50% of the value of the immovable property of the debtor, should do so.

*Sub-section (3) :—*The right conferred by this sub-section on the bank in whose favour an award is made under this section is an additional right enabling the bank to get the award executed under the provisions of the *Bombay Land Revenue Code, 1879* because even without this remedy, S. 55 being one of the sections mentioned in S. 61 the Board must transmit such an award to the court for registration, the Court must register it under S. 62 and thereupon it becomes executable as the decree of a Civil Court under S. 63.

*An error in this Act :—*This sub-section is in the same terms as it was in S. 55 of the Act of 1939. Since then the said section was

first amended by Bom. Act VIII of 1945 and for the second time by Bom. Act II of 1946. The amendment effected by the first Act was of such a character that it did not render it necessary to amend sub-section (3) thereof. But that made by the second has so altered the provisions contained in sub-sections (1) and (2) thereof that the direction to the Board to pass an award is now contained in sub-section (1) instead of in sub-section (2). In view of that change, it was absolutely necessary to amend sub-section (3) by substituting the figure 1 in brackets for the figure 2 in brackets. This has not been done obviously through oversight. This omission is not however likely to lead to any practical difficulty in giving effect to the provisions of sub-section (3) because the intention of the Legislature can be easily gathered, on reading the section as a whole, to be to provide for an additional method for the recovery of the dues of the Bank from the debtor under the award which the Board is directed by sub-section (1) to make in favour of the Bank instead of in that of the creditors of the debtor simultaneously with directing the bank either to pay the dues to the creditors in cash or pass bonds with respect thereto in their favour as they may choose.

56. If the Board making an award under section 54 is at any stage of the proceeding satisfied that any claim by a creditor in such proceeding had been put forward in collusion between the debtor and such creditor with a view to defeat the lawful claims of any of the other creditors the Board shall not scale down any of the debts of such debtor in the manner provided in section 52 but shall make an award for the full amount of the debts due from such debtor.

#### COMMENTARY

*Scope of the section* :—The provision in this section is of such a character that it could easily have been added as a proviso to S. 52. That section casts a duty upon the Board to scale down in certain cases

the debts due by a debtor. That is however a special concession which he cannot legitimately hope to get if he is dishonest. This section contemplates one of the ways in which his dishonesty would be exposed. It is that he may be found to have colluded with a bogus creditor and secured an undue advantage for himself and thereby attempted to defeat the lawful claims of his other creditors and provides that when such conduct of his is revealed, the Board shall, as a punishment to him, deprive him of the said concession and pass an award for the full amount of the debts that may be found due from him on making up accounts under SS. 38 to 46. Before the Board can act under this section it must be satisfied that the debtor had so colluded.

57. If, after an award is made under section 54, the Board finds on an application made to it by any party or otherwise, that the debtor has other property which was not disclosed to the Board when the award was made, or that any property included in the award did not belong to the debtor, the Board may, notwithstanding anything contained in this Act, re open the award and re-adjust the debts in accordance with the provisions of this Act :

Re-opening of award and re-adjustment of debts.

Provided that where the Board is satisfied that the non-disclosure of such property was in consequence of any fraud on the part of the debtor, the Board in revising the award shall not give the debtor the benefit of section 52.

### COMMENTARY

*Scope of the section :—*This section provides for a contingency in which an award already made turns out to be wrong on any of the two grounds namely :—

- (1) that the debtor is found to own some property not brought to the knowledge of the Board till the award was made ;



- (2) that a particular property taken into consideration at the time of the determination of the value of his entire property or his paying capacity is found not to have really belonged to him.

In any of these cases it must be re-opened and revised in view of the disclosure, no matter in what manner it occurs. This is what the first main provision in the section empowers the Board to do.

Now in the case of the first ground the reason for the non-disclosure of a property of the debtor may be either his ignorance or neglect of duty to make proper inquiries or a fraudulent intention on his part *i. e.* wilful suppression of the fact of the property being of his ownership with a view to save it for himself or for any of his relations. In the last case, he must forfeit the special concession which this Act provides for in S. 52, namely a scaling down of his debts to his paying capacity. The Legislature recognises this principle and has added the proviso to this section enabling the Board to deprive such a debtor of the benefit of that section while revising the award.

58. (1) Where, at the hearing of any application under this Chapter, any question of law or  
Reference by the Board. usage having the force of law arises, on which the Board entertains reasonable doubt, the Board may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the First Class Subordinate Judge within whose jurisdiction the Board may have been established.

(2) An appeal against an award which embodies the decision of the First Class Subordinate Judge on such reference shall lie to the District Court notwithstanding anything contained in section 9.

## COMMENTARY

*Scope of the section* :—This section makes provision for a matter not directly connected with the advancement of the remedy specially provided by this Act. It could as well, and should better, have been placed just after S. 6 which confers on the Board a general wide power to decide all questions, “whether of title or of priority or of any nature whatsoever, and whether involving matters of law or fact” for the contingency provided for herein is that the Board may entertain “a reasonable doubt”, “on any question of law or usage having the force of law”. The section is sub-divided into two sub-sections, of which the first contains the main provision and the second relates to an appeal.

*Sub-section (1)* :—The provision in this sub-section is that in case it entertains such a doubt as to what would be the legal and proper decision of such a question it may, either of its own motion or on the application of any of the parties, draw up a statement of the facts out of which the point, on which doubt is entertained, has arisen and of what that point is, record its own opinion on such point and forward the same for decision to the First Class Subordinate Judge within whose jurisdiction the Board may have been established.

It is worthy of remark that although the powers conferred upon the First Class Subordinate Judge, now called Civil Judge, Senior Division, by SS. 9 and 15 of this Act, have been withdrawn by amending the said sections in 1945, that conferred upon him by this section has not been withdrawn. It cannot be ascertained whether this is the result of a deliberate omission or an inadvertent oversight. Whatever the reason, the power under this section remains unaffected by the amending Acts of 1945 and 1946 and it must be exercised when a reference is made by a Board under this section because no reference can be made by it to any other officer or to any court including even the District Court.

The above provision is silent as to what the First Class Subordinate Judge should do on receipt of such a reference. It appears that the Legislature should have added a separate sub-section giving direc-

tions as to the action to be taken by that Judge on receipt of such a reference. It has not however done so, taking it for granted that he would follow the principles of natural justice while disposing of it, *i. e. to say*, before deciding the point and sending back the reference, he would issue notices to the parties and give them an opportunity of being heard either personally or by their duly authorised agents or by pleaders. The engagement of professional lawyers before him in a reference under this section is not barred by S. 67 *infra*.

The said sub-section is also silent as to what the Board should do on receiving back the reference with the decision of the Judge on the doubtful point and how much weight it should give to the decision. It is however clear from the words "an award which embodies the decision of the First Class Subordinate Judge on such reference" contained in sub-section (2) that the Board is expected to treat that decision as binding on it and to make an award in pursuance thereof.

Thirdly, the sub-section under consideration is also silent as to what order the Judge should make as to the costs of the reference to him, if any. That is however a matter within his discretion which he can be expected to exercise on judicial principles.

*Analogous Law* :—The provision in this sub-section is similar to that contained in S. 113 of the *Civil Procedure Code, 1908*, which as contemplated therein is to be read subject to the conditions and limitations prescribed in Or. XLVI in Sch. I to the *Code*, which are many and varied. The only analogy to this sub-section is to be found in r. 1 of the said rules. There is however this distinction between their wording that whereas under r. 1 of the said Order it is necessary that the suit or appeal in which the doubtful point arises must be one in which the decree must not be subject to appeal or that such a point must arise in the execution of any such decree, *i. e. to say*, a decree which is not subject to appeal, there is no such restriction in this sub-section. Hence a reference as provided for herein can be made even in a case covered by S. 9.

*Sub-section (2)* :—The provision in this sub-section is that an appeal against an award made by a Board pursuant to the decision

of the First Class Subordinate Judge on the point referred to him under sub-section (1) must be made to the District Court.

*A case of redundancy in this Act :-* In view of the amendment made in S. 9 this provision is now redundant. Even if it was thought necessary to retain it, the words "notwithstanding anything contained in section 9" should have been deleted when the said section was amended, there being nothing therein now which would enable any other court except a District Court to entertain any appeal whatever against an award made by a Board.

59. Notwithstanding any law or custom or contract to the contrary, the amount ordered to be paid to any creditor or bank by any debtor in any award made under section 24, 54 or 55 shall be held to be the amount due from such debtor to the creditor or the bank, as the case may be, on the date of such award in any suit or proceeding to which any of the parties to the award is a party.

Amount ordered in the award to be held to be the amount due in all suits and proceedings.

## COMMENTARY

*Scope of the section :-* It may be recalled that S. 53 (2) has provided that the amounts of the debts as scaled down under S. 52 must be held to be due by the debtor to his creditors respectively and that nothing in excess thereof shall be recoverable from him in any future litigation between him and any of his creditors, even though an award for the recovery of the amounts of such debts may not have been passed for any reason whatever. This section gives a similar finality to the amounts for which an award may have been made under S. 54.

This is not however the only purpose of this enactment. It is also intended to give and gives a similar finality to the amounts for the payment whereof orders may have been made by the Boards in awards made under SS. 24 and 55.

The implication of this provision seems to be that even though a Board established for any local area or for any class of debtors in any local area is abolished and not substituted by another, the work of adjustment of debts done by it would remain behind it and be effective and binding on the parties who may have taken part in the proceedings before it and regulate their future relations.

*Another case of omission in the Act :—*Prior to the amendment of S. 23 (4) of this Act by way of the deletion of the words "under section 54" an award made on a settlement under S. 23 had the same finality as those made under SS. 24, 54 and 55 because then such an award used to be due made under S. 54. Such cannot however be deemed to be the case after the said amendment. Obviously the Legislature could not have intended to take away from such an award the character of finality as to the amount ordered thereby to be paid, which had been given to it by this section without specific mention of S. 23 therein. What was then unnecessary was however rendered necessary by the amendment of S. 23 (4) above-mentioned. This is, in my view, a glaring omission in the Act which is required to be made good as early as practicable.

60. (1) An award made under section 54 or 55 shall direct the party who has been ordered to pay the costs to pay one-half of the difference between the court-fee actually paid on the application for adjustment of debts or in the case of suits and applications for execution transferred to the Board under section 37 on the plaint in the suit or on such application and the fee which would have been payable under section 7 of *the Court-fees Act, 1870*, VII of 1870, as if the application for adjustment of debts, or the suit or the application for execution had been a suit for money and the total amount of the debts declared due from the debtor had been the amount claimed in such suit ;

Court-fees to be charged.

Provided that where the costs are payable by any co-operative society or by any bank referred to in section 55 the amount of the court-fees payable by such society or bank shall not be directed to be recovered from such society or bank ;

Provided further that where an award includes any sum in respect of which a creditor had obtained a decree of a civil court, allowance shall be made in calculating the amount of the court-fee payable in respect of the award for the court-fee already paid in respect of such decree.

( 2 ) Notwithstanding anything contained in any law such fee shall be the first charge on the property of the party ordered to pay the costs.

### COMMENTARY

*Scope of the section* :—Although the marginal note to this section seems to indicate that this section contains a general provision as to charging court-fees in the case of all proceedings under this Act, the contents thereof show that it contains a provision only as to charging court-fees on awards made under SS. 54 and 55. Attention has been drawn to the omission of SS. 23 and 24 from the purview of this section and its implication has been fully discussed in the Commentary on those sections. As it is, it is sub-divided into two sub-sections, the first of which alone is actually concerned with the scale for charging court-fee on the said awards while the second only indicates the first source which the Government can look up to for the recovery of the fee charged according to that scale.

*Sub-section ( 1 )* :—According to this sub-section the court-fee to be charged on an award made under S. 54 or S. 55 is one-half of the difference between that actually paid on the application under S. 17 or the plaint or application for execution transferred to the Board under S. 37 and the fee which would be payable on the amount for which the award is made, under S. 7 of the *Indian*

*Court-fees Act, 1870*, it being treated for this purpose as a plaint in a suit for the recovery of the amount for which it is made. The court-fee payable on an application under S. 17 is such fee as would have to be paid on a plaint in a suit for accounts as provided in S. 18 (2). For further explanation of that provision see the Commentary on that section.

The fee payable on plaints filed in civil courts is calculated *ad valorem* on the amount sought to be recovered according to the scale given in Art. 1 in Sch. I to the *Indian Court-fees Act, 1870* and that payable on applications for execution filed in the civil courts is a fixed one of annas 8 as provided in Art. 1 (b) in Sch. II to the said Act. The same scale as is above-referred to in the case of the fee on plaints filed in civil courts would be the scale to be referred to for ascertaining that payable on the amount of the award treated as a plaint in a suit to recover money. The fee chargeable by the Board would be one-half of the difference between that paid in respect of the application under S. 17 on the plaint or application for execution on the one hand and the full fee payable had the applicant filed a suit in a civil court to recover the amount held due from the debtor, on the other. It appears that if after an application is made by a debtor under S. 17 any suit or application for execution filed by any of his creditors is transferred to the Board by the Court concerned, the total amount of fee paid by the applicant on his application, by his first creditor on his plaint and the second creditor on the application for execution would have to be added together in order to ascertain the figure on one side of the subtraction necessary for determining the difference, because the principle underlying this section is to charge one-half of the difference between the fee actually paid in the case of any adjustment-proceeding and that which would be payable on the amount of the award treated as a plaint in a money-suit.

*Illustration* :—It would be clear how this can be done if we take a concrete instance. Suppose that a debtor had filed an application under S. 17 (1) on valuing the claim at Rs. 5. He must therefore have paid a court-fee of annas 6 according to Art. 1 in

Sch. I to the *Indian Court-fees Act, 1870*.<sup>1</sup> Suppose further that one of the creditors in the application had prior to that filed a suit in a civil court against that debtor for the recovery of the amounts due under a bond for Rs. 300 and a pro-note Rs. 200, and that the amount of interest due under the former was Rs. 100 and that due under the latter was Rs. 50. Thus the amounts sought to be recovered from the debtor in that suit were Rs. 400 under the bond and Rs. 250 under the pro-note. According to Art. 1 in Sch. I to the *Indian Court-fees Act, 1870* he must therefore have been required to pay a court-fee on Rs.  $400 + 250$ , which must be Rs. 30. in the former case and Rs. 18-12 in the latter. Thus in all he must have paid Rs. 48-12. Further suppose that a second creditor of his had filed before this Act came into force an application for the execution of a decree held by him against him and that it was transferred to the Board under S. 37. On that application he must have paid annas 8 as court-fee. It seems that all these amounts of court-fee must be added together in order to get the figure on one side of the subtraction. In the above case therefore that figure would be annas 6 + Rs. 48-12 + annas 8 = Rs. 49-10. For that on that other side suppose that the debtor is held liable to pay Rs. 2,000 in all including the debts mentioned in S. 3, those debts being exempted from the operation of specific sections only, of which S. 60 is not one. According to the scale above-referred to the court-fee which would have been payable if any person had filed a suit to recover Rs. 2,000 from another person would have been Rs. 125. This being a larger amount deduct Rs. 49-10 from it. The balance that remains is Rs. 75-6. This is the difference of which one-half is to be recovered from the party held liable to pay costs. One-half of it amounts to Rs. 37-11. The said party would therefore have to pay that amount of court-fee on the award.

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1. The *Court fees Act, 1870* has in its application to Province of Bombay been amended by Bom. Act XV of 1943 which is a temporary measure. The figures of the amounts of court fee payable since 1-1-44 would not therefore be the same as given in the illustration but those enhanced by 25%. See also the Com. on S. 18 *supra*.



*Proviso 1* :—The above sub-section has two provisos. Thereout the first has its application only so far as the direction as to the payment of court-fee as provided in the sub-section is concerned. The provision in the proviso is that if the Board has come to the conclusion that a co-operative society which is one of the creditors of the debtor or a bank which has agreed to issue bonds according to the provisions of S. 55, is liable to pay costs, it shall not direct the society or the bank to pay the court-fee at all.

*Proviso 2* :—This proviso has reference to the actual payment side in the subtraction to be made in order to find out the required difference. It provides that if any of the creditors of a debtor had claimed a debt as due under a decree of a civil court, allowance must be made while ascertaining the difference for the amounts of court-fee which the said creditor may have paid in the suit in which he may have obtained the decree.

*Illustration* :—Suppose that in the above illustration, out of the amount of Rs. 2,000 found in all to be due from the debtor, Rs. 500 was claimed as due under a civil court's decree. Suppose further that this Rs. 500 was made up of Rs. 400 the decretal amount and Rs. 100 the amount of interest from the date of decree to that of the application under S. 17. He must therefore have paid Rs. 30<sup>2</sup> as court-fee in order to obtain that decree. This proviso says that if such is the case, the amount of actual payment to be deducted would be Rs. 79-10 instead of Rs. 49-10. That being deducted from the ordinary fee on a plaint to recover Rs. 2,000, namely Rs. 125, the balance comes to Rs. 45-6. One-half of that is Rs. 22-11. Therefore the party liable to pay costs would have to pay in such a case Rs. 22-11 instead of Rs. 37-11 on account of court-fee by virtue of this proviso.

*Sub-section (2)* :—This sub-section provides that whatever provision there may be in any other law as regards the method

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2. See the foot-note under this section which is applicable to the figures of court-fees occurring in this illustration also, .

of recovering costs of which court-fee forms a part, the amount held payable under sub-section (7) shall be the first charge on the property of the person held liable to pay the costs of the proceeding.

61\*. (1) The Board shall transmit an award made under section 23, 24, 54 or 55 to the Court :  
Transmission of award to Court. Provided that before the award is so transmitted the balance of court-fees payable under the award shall be paid by the party ordered by the Board to pay the same.

(2) If the debtor fails to pay the balance of the amount of court-fees ordered to be paid by such debtor, the Board may transmit the award to the Court on the application made by any creditor if such creditor pays such amount of court-fees. Any amount so paid by the creditor shall be added by the Board to the amount payable by the debtor under the award.

### COMMENTARY

*Scope of the section* :—This section lays down the further step to be taken by the Board after making an award either under S. 23 made on recording and certifying a private settlement or under S. 24 on an interim application for recording and certifying a settlement of a debt between the parties during the pendency of an application under S. 17, or under S. 54 after making full inquiries and scaling down debts under S. 52 at the end of a proceeding, or under S. 55 after making full inquiries, scaling down under S. 52 and further scaling down. That step is to send over the award to “the Court” which according to S. 2 (4) (a) means “the District Court to which an appeal lies against the award of the Board under S. 9”. This section has been divided into two sub-sections, the first of which contains the general provision above-explained and has a proviso, and

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\* The figure 23 after the word “section” in this section was inserted by S. 26 of Bom. Act VIII of 1945.

the second whereof is partly in the nature of a proviso to that proviso and contains an incidental provision also.

*Sub-section (1) :—*The general provision contained in this sub-section has been already sufficiently explained above.

*Proviso :—*That provision is controlled by the proviso which lays down a condition which must be fulfilled before the Board can transmit the award to the Court. That condition is that the party liable to pay court-fee under the award must have paid the balance thereof payable by him.

*Sub-section (2) :—*The provision in this sub-section is that if the party liable to pay the balance of court-fee is the debtor and he fails to pay it for any reason whatever, any of his creditors may make an application for transmitting the award to the Court and offer to pay the said balance and that on his doing so the Court may grant his application, accept the amount offered and transmit the award to the Court. The two intermediate steps are not specifically mentioned in the sub-section but they are necessarily implied.

The further incidental provision above-referred to is that in case the above contingency occurs the award is to be modified by adding the amount of the balance of court-fee so paid by the creditor to the amount payable by the debtor under the award to that creditor.

62. (1) The Court shall register any award transmitted by the Board—

Award to be registered.

- (i) if within the period provided in this Act, no appeal is filed against the award under section 9, or
- (ii) if an appeal is filed under the said section and such appeal is dismissed, or
- (iii) if the award is modified by the Court, in such modified form, or

- (iv) if the award is transmitted to the Board for re-consideration of any points, after considering the decision of the Board on the said points and after making such modifications in the award as it thinks fit.

(2) From the date on which the award is registered under sub-section (1), it shall, in supersession of all transactions between the parties and in supersession of all previous decisions of a civil court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

### COMMENTARY

*Scope of the section* :—The marginal note seems to convey the idea that this section contains a provision only as to the registration of the awards. But that is the purport of the first sub-section thereof only. Its second sub-section mentions the legal effect of registration.

*Sub-section (1)* :—The provision in this sub-section is that the Court to which any of the awards referred to in S. 61 is transmitted by the Board shall register it in the same form in which it was originally made, in two cases, namely :—

(i) if within the period mentioned in this Act no appeal is filed against it under S. 9; and

(ii) if an appeal is filed under the said section and such appeal is dismissed.

The first case would obviously require the Court to wait till the full period prescribed for making an appeal has expired and the second case would require it to wait till the appeal filed against the award is heard and its result is known. After that event too, it will have to see what the result is, for it is only if the appeal is dismissed that the case would fall under this part of the provision which relates to the registration of an award in the same form in which it has been originally made and it cannot remain in the same form if the appeal is allowed wholly or partly.

For such a case there is the further provision in the same sub-section to the effect that the Court shall register the award in the modified form if it has modified it in appeal. This is case (iii) for which provision is made in this sub-section.

There is also case (iv) on the whole and the second one of an award being registered in a modified form. That is a case in which after the transmission of an award by the Board and after the consideration of the Board's decision on the points involved in the proceedings, the Court thinks it proper to retransmit the award to the Board for the reconsideration of its decision on certain points, which may not be deemed by it to be satisfactory and the Board again transmits the award with its decision made after reconsideration. In such a case the Court must consider the fresh decision of the Board on such points and then register the award after making such modifications therein as it thinks fit.

The power of transmission of an award to the Board for reconsidering its decision on any points assumed in this section is not conferred on the Court by any specific section of this Act. There is of course S. 13 prescribing the same procedure for hearing appeals under this Act, as is laid in the *Civil Procedure Code, 1908* for hearing appeals from the decrees and orders of civil courts. That procedure is contained in Or. XLI in Sch. I to the said *Code* and in that Order there are Rules 23 and 25 empowering the Appellate Court to remand a case for re-trial or for trial on certain fresh issues but it is difficult to place the above case under any of the above rules because the Court would not be acting in this matter as a Court of Appeal. It seems to be similar to that contemplated by paragraph 14 of Sch. II to the *Civil Procedure Code, 1908* which has since been repealed by Sch. III to the *Indian Arbitration Act, 1940*.

*Sub-section (2)* :—This sub-section provides that after an award is registered as provided for in sub-section (1) it shall be so binding on the debtor and on his creditors and their successors in interest, *i.e. to say*, their heirs, executors, administrators, assignees or any other persons on whom their interests devolve, as to supersede the legal

effect of all transactions entered into between them theretofore and of all previous decisions of any civil courts with respect to the debts mentioned in the award. This means that since the date of its registration their rights and liabilities as against each other would be determinable only by a reference to it and not to any other document even if it be the decree of a civil court.

63. The award so registered shall be executable as a decree of the Court in which it is registered *\*and execution thereof shall be transferred to the Collector; and thereupon the provisions of sections 69 to 72 of the Code of Civil Procedure, 1908 and of the Third Schedule thereto, save in so far as they are inconsistent with any provisions of this Act, shall as far as may be, apply :*

Recovery of amount due under an award.

V. of 1908.

Provided that an amount due under award made under section 55 shall also be recoverable in the manner specified in sub-section (3) of the said section :

Provided further that nothing in this section shall affect the right of Government or a local authority or a co-operative society to have recourse to any mode of recovery allowable by any law for the time being in force.

### COMMENTARY

*Scope of the section :—*This section states what is the legal effect of the registration of an award by the Court under the preceding section. The provisoes to it make it clear that the said provision should not be deemed to affect the rights, if any of certain creditors of the debtor to recover the amounts declared due to them by the award by resorting to other remedies provided by any other law.

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\* The italicised words at the end of the first paragraph of this section were added by S. 27 of Bom. Act VIII of 1945.

The legal effect above-referred to is that an award registered as above becomes capable of execution like a decree of the Court in which it is registered. The Board becomes *functus officio* on transmitting an award to the Court. The Court in turn becomes *functus officio* on registering it because the only act it is authorised to do thereafter is to transfer the award for execution to the Collector. After the transfer the Collector becomes seized of the matter and he is to be guided in the execution proceeding by the provisions of SS. 69 to 72 of and Schedule III to the *Civil Procedure Code, 1908*.

*N. B.* It should be noted in connection with this provision that S. 41 of Bom. Act VIII of 1945 directs that all execution proceedings pending in the District Court or the Court of the First Class Subordinate Judge when the said Act comes into force shall be transferred to the Collector under S. 63 of the Act of 1939. The effect of it is to give a retrospective effect to the provision added in paragraph 1 of the said section. For the exact wording S. 41 of the amending Act see the relevant Appendix.

*Proviso (1) :—*Although the main provision applies to all the kinds of awards, this proviso leaves the bank passing bonds under S. 55 to the creditors of a debtor free to recover any amount due under an award in its favour made under that section as arrears of land revenue as provided in sub-section (3) thereof.

*Proviso (2) :—*Similarly this proviso leaves the Provincial Government or a local authority or a co-operative society to have recourse to any other mode of recovery to which it is entitled to have recourse under the provisions of any other law for the time being in force such as the *Bombay Land Revenue Code, 1879*, the *Bombay Municipal Boroughs Act, 1925*, the *District Municipal Act, 1901* and the *Bombay Co-operative Societies Act, 1925*.

These two provisos affect only the mode of recovery not the amount due to any of the authorities mentioned in them. They will continue the same as may have been mentioned in the awards.

64. (1) Whenever from any cause the payment of one-half or more of the land revenue payable to the Provincial Government is suspended or remitted, the payment of the whole of the instalment due for that year and the full amount of the instalment due for each subsequent year under an award made under section 24 or 54 shall be postponed for one year.

Postponement of payment of instalment in case of remissions etc.

(2) Whenever from any cause the payment of any portion less than one-half of the land revenue payable to the Provincial Government is suspended or remitted one-half of the amount of the instalment for that year and the full amount of the instalment due for each subsequent year under an award made under section 24 or 54 shall be postponed for one year.

### COMMENTARY

*Scope of the section* :—The provisions of this section relate to a question which may arise in the course of the execution of a registered award. The question is that there may be a failure of crops wholly or partially in any particular year and the agriculturist-debtor may not be able to pay the instalment due in that year; should the creditor to whom it is due be helped in recovering it by the ordinary process of law which would necessarily be applicable to the case in the absence of any other specific provision in this Act to the contrary? The Legislature having anticipated this has provided in this section that the answer to the above question will depend upon the severity of the distress, which is to be measured by the way in which the Provincial Government would act in the matter of recovery of that year's assessment due from the debtor and lays down two rules by its two sub-sections for the guidance of the Collector, who is now the executing authority, in granting relief to the debtor in such cases. The rules are :—(1) if the Provincial Government has suspended or



remitted the payment of one-half or more of the land revenue payable to it in any year the creditor to whom an instalment is due shall not be entitled to recover in that year the whole of the instalment for that year but shall be entitled to recover it in the next year and that he shall recover the amount of each subsequent instalment one year later than it becomes due; and (2) if such Government has suspended or remitted less than one-half of that year's land revenue the creditors of the debtors would be entitled to recover in that year only one-half of the instalment payable in that year, the remaining half in the next year and each of the subsequent ones one year later than it becomes due.

*Illustration* :—Thus suppose that in the year 1947 there is a draught and the Provincial Government suspends or remits half or two-thirds of the land revenue payable by the assesseees in a particular village in which one of the debtors against whom a Board has passed an award resides and the competent Court has registered it. The result of such suspension or remission on the part of Government would be that all the creditors of the debtors including even a local authority or co-operative society would not be entitled to recover the instalments due to them in that year but would be entitled to recover them in the year 1948 and the amount of each subsequent one year later than the due dates, *i.e.* to say, the instalments of 1948 in 1949, those of 1949 in 1950 and so on. The same would be the result even if the Government has granted suspension or remission in the case of individual debtors. (2) If in the above case the Government suspends or remits less than one-half of the land revenue recoverable by it in the year 1947 the creditors of the debtors in that village would be entitled to recover only one-half of the instalment due in that year and the other half in the subsequent year *i.e.* in 1948 and each of the remaining instalments, which falls due, one year later as under the preceding sub-section. In this case also there is no distinction between suspension or remission being granted to all the assesseees in a village or to individual assesseees.

*A problem for consideration* :—This section presents a serious problem for the consideration of the Collectors of the districts in

which Boards may have been established and in which famine conditions may have rendered it necessary for Government to suspend or remit the whole or a portion of the assessment payable to it. That problem is whether an award made under S. 23 of the Act does or does not come within the purview of sub-section (2) of this section. It arises because S. 23 (4) of the Act has been so amended by Bom. Act VIII of 1945 that an award made under S. 23 ceases to be an award made under S. 54 and yet sub-section (2) of this section has not been amended by inserting the figure "23" before figure "24". Before the passing of the amending Act, an award made under S. 23 fell under the category of those made under S. 54. But now it cannot be deemed to fall under it. Can the Collector of a district of the class above-mentioned still give the benefit of this section to a debtor against whom an award is made under S. 23 after 21st April 1945? I believe he cannot so long as this section remains unamended, because although it can hardly be true that the Legislature intended that the debtors against whom awards are made under S. 23 should not get the benefit of the provision contained in this section, it is against the recognised canons of construction to read into a section a word or a figure which is not there when the language thereof is unambiguous as that of this section is.

*65\*. Notwithstanding any law or contract but subject to the provisions of section 66, no alienation made by a debtor, who is a party to any proceedings or award under this Act, of any property belonging to the debtor or included in the award shall be valid except with the previous sanction of the Provincial Government.*

No alienation by the debtor to be binding.

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\* This section as printed above was substituted by S. 28 of Bom. Act VIII of 1945 for the following which was originally there, namely:—

*65. Notwithstanding any law or contract but subject to the provisions of section 66, no alienation made by a debtor, who is a*

*party to an award made under this Act, of any property included in such award shall be valid except with the previous sanction of the Provincial Government.*

No alienation by the debtor to be binding.

## COMMENTARY

*Scope of the section* :—The provision in this section has for its object the protection of the interests of the creditors of a debtor who is a party to a proceeding under this Act or against whom an award is made. It renders invalid, except when made with the previous sanction of the Provincial Government, any alienation by such a debtor of any property of his or which has been included in the award, in spite of any provisions of any other law to the contrary and in spite of the fact that a contract for the alienation, which would be otherwise held valid by a civil court, may have been made between the contracting parties.

The fact that the alienation is declared invalid and not void *ab initio* implies that the Board or the Court must be moved by any person interested in the award to declare it as such, if it is desired that the alienation should be held to be invalid.

The Provincial Government has, in the exercise of the power conferred by S. 79 of this Act, delegated to all Collectors its own power to sanction an alienation of a debtor's property under this Act by Notification R. D. No. 2235/45 dated 7th August 1946 published at p. 144 of Pt. IV B of the B. G. G. dated 15th August 1946.

*The saving-clause in this section* :—What is prohibited by this section is only an alienation by a debtor who is a party to a proceeding or to an award under this Act. It leaves unaffected the power of the Board or the Court to order the sale of a part of the debtor's property for the liquidation of his debt or a part of it, if it considers it necessary in his interest to do so.

66\*. Notwithstanding anything contained in this Act,

if the Board to which an application for adjustment of debts lies under section 17 in respect of the debts of any debtor, or the Court *hearing an appeal* against the award is at any time satisfied that it is in the interest of a debtor that any

Board or Court  
may order sale of  
debtor's property  
in liquidation of  
his debt.

part of his property should be sold in liquidation of his debt or part thereof, such Board or Court may order the sale of such part of the property for such purpose. The property ordered to be sold under this section shall be sold by the Collector in the manner prescribed :

Provided that the part of the property ordered to be sold under this section shall not exceed the part liable to be sold under sub-section (3) of section 68.

*Provided further that the Board or the Court, as the case may be, shall not order the sale of any land to which section 73A of Bombay Land Revenue Code, 1879, applies without the previous sanction of the Collector.* Bom. V of 1879.

## COMMENTARY

*Scope of the section* :—This section invests the Board and the Court hearing an appeal with a very wide discretionary power to order the sale by the Collector in the prescribed manner of any part of the property of a debtor for the liquidation of his debt or any part thereof at any stage of a proceeding under S. 17 in the case of the Board and of an appeal in that of the Court. The condition precedent for the exercise of that power is that the Board or the Court must be satisfied that it is in the interest of the debtor to do so. If it is satisfied as to that fact no other provision in this Act can come in the way of its exercising it. There are however two limitations to its exercise imposed by the provisoes to this section. The first thereof affects the quantum of the property that can be put to sale for such a purpose and that is that it should not in any case be in excess of that which is liable to be sold under S. 68 (3) *infra*. The second makes the exercise of that

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\* The words *hearing an appeal* were substituted for the words *before which an appeal lies* in the first paragraph of this section by S. 29 (i) of Bom. Act VIII of 1945 and the second proviso to the section was added by S. 29 (ii) of the said Act.

discretion subject to the previous sanction of the Collector in case the property to be sold is a land to which S. 73 A of the *Bom. L. R. Code* is applicable.

*Previous history of this section* :—It appears from the *Legislative Assembly Debates, 1939*, Vol. VII, p. 1865 that the clause in the Bill before the Assembly which was clause 62 (originally clause 60), had been so drafted as to confer on the Board and the Court power to order the sale of the whole of the property of a debtor at any stage of a proceeding or appeal, as the case may be. But the Assembly disapproved of the proposal to invest them with such a power, for in that case the debtor was likely to be deprived of all his property and so the clause was so amended as to empower them to order the sale of any part of the property of a debtor if it was found to be in the interest of the debtor to do so.

*S. 73 A of the Bom. L. R. Code, 1879* :—The section of the *Bom. L. R. Code, 1879* referred to in this section runs as follows :—

73 A\*. (1) Notwithstanding anything in the foregoing section, in any tract or village to which the *Provincial Government* may, Power to restrict by notification published before the introduction therein right of transfer. of an original survey settlement under section 103, declare the provisions of this section applicable *occupancies* shall not after the date of such notification be transferable without the previous sanction of the Collector.

(2) The *Provincial Government* may, by notification in the *Official Gazette*, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section.

S. 73 of the *Code* to which this section makes a reference in the beginning declares an occupancy to be an heritable and transferable property "subject to the provisions contained in S. 56 and to

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\*This section was inserted in the *Code* by S. 11 of Bom. Act VI of 1901, the words *Provincial Government* and *Official Gazette* were substituted for the words *Government* and *Bombay Government Gazette* by the *Adaptation of Indian Laws Order in Council, 1937* and the word *Occupancies* was substituted for the words *the occupancy or interest of the occupant in the land* by S. 31 of Bom. Act IV of 1913.

any conditions lawfully annexed to the tenure and save as otherwise prescribed by law”.

Under sub-section (1) the Government of Bombay issued several notifications from time to time between 18-2-02 and 2-8-32 making the kind of declaration contemplated by that sub-section with respect to certain villages in the Nandurbar, Navapur, Shirpur, Taloda, Shahada and Sakri Talukas and the Akrani Mahal of the West Khandesh district and it exempted from the operation of the said notifications occupants belonging to the Brahman, Vani, Marwadi, Khatri, Prabhu, Bhoari and Parsi communities residing in the said areas by notifications issued under sub-section (2) between 12-7-06 and 11-1-16. For the details thereof see Gupte's *Bombay Land Revenue Code, 1879*, Third edition, pp. 449-50.

67\*. No pleader, Vakil or Mukhtyar and no advocate or attorney of a High Court shall be entitled to appear on behalf of any party in any proceeding before the Board under this Act :

Pleaders etc. excluded from appearance (except when permitted).

Provided that if the Board after examining the parties to any proceeding before it is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow such party the assistance of any pleader, vakil or mukhtyar or advocate or attorney of a High Court the Board may allow such party at his own cost to be repre-

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\*The second proviso to this section as above printed was substituted by S. 30 of the Bom. Act VIII of 1945 for the following, which was originally there, namely :—*Provided further that a woman exempted from personal appearance in a court under section 132, Code of Civil Procedure, 1908, shall be entitled to appear in any proceeding before the Board through any agent duly appointed for the purpose.*

V of 1908.

sented by a pleader, vakil or mukhtyar or advocate or attorney of a High Court ;

*Provided further that any party to any proceeding before the Board shall be entitled to appear through an agent other than a pleader, vakil, mukhtyar, advocate or attorney of a High Court, duly authorised in writing, in the case of a co-operative society, signed by the Chairman or in his absence by the Vice-Chairman of such society, and in the case of any other party signed, before a Magistrate, Village Munsiff or Sub-Registrar, by such party.*

### COMMENTARY

*Scope of the section and analogous law :—*This section drafted on the model of S. 68 of the *D. A. R. Act* enacts that no pleader, vakil or mukhtyar and no advocate or attorney of a High Court, shall, as of right, appear on behalf of any party in any proceeding before the Board under this Act. The provision having been so worded, there is nothing in it to prevent a party from engaging a lawyer for assisting him in getting together the necessary materials for and in preparing an application to be filed under S. 17 and to guide him at the subsequent stages, although a legal practitioner of any of the above classes cannot claim, as of right, to appear for and institute a proceeding on behalf of a party. Is this prohibition as to pleading only or both pleading and acting? This is a question which deserves to be considered as those terms are mentioned separately in SS. 9 and 12 of the *Bombay Pleaders Act, 1920* (Bom. Act XVII of 1920), “appearance” and “acting” have been mentioned separately in Or. III r. I in Schedule I to the *Civil Procedure Code, 1908* and a distinction has been drawn in Or. III r. 4 (5) between a pleader “engaged for the purpose of pleading only” and one who “has been duly appointed to act in Court” on behalf of a party. In *Fazze Ali’s Case*<sup>1</sup> the word ‘act’ as occurring in S. 5 of Act XX of 1865 has been interpreted to mean “the doing something as the agent of the principal party which shall be recog-

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1. (1873) 19 W. R. Cr. 9.

nized or taken notice of by the Court as the act of that principal; such for instance as filing a document". In *Kali Kumar Roy v. Nobin Chundar*,<sup>2</sup> "to act for a client in Court" has been interpreted to mean "to take on his behalf in the Court or in the offices of the Court the necessary steps that must be taken in the course of the litigation in order that his case may be properly laid before the Court". Following these cases and in view of the definition of the word "pleader" contained in S. 2 (15) of the *Civil Procedure Code, 1908* it has been held in *In re Filing Powers by an Advocate or Pleader*<sup>3</sup> that "an advocate "acts" when he files a memorandum of appeal or cross-objections or any other document in a case, other than a memorandum of appearance under r. 4 (5), and that in all such cases a power of attorney is necessary". While interpreting the same rule (Or. III r. 4) the Punjab High Court has, in the case of *Amir Shah v. Abdul Aziz*,<sup>4</sup> distinguished between "to plead" and "to act" in the following words, namely:—"A pleader who appears on behalf of the pleader of a party can appear for the latter pleader only "to plead" on behalf of the party but he has no power "to act" on his behalf without a document in writing executed in the manner prescribed in Or. III r. 4. Referring a pending suit to arbitration is "to act" and hence the pleader who appears for another cannot do so in the absence of such a document in writing". The meaning of the term "appearance" as occurring in the said rule was interpreted by the Madras High Court in cases reported in 22 *M. L. J.* 284, 307 and 51 *M. L. J.* 290 and as occurring in Or. IX r. 13 of the same Schedule to the *Code* by the Bombay High Court in the case of *Manilal v. Virchand*<sup>5</sup> to mean not a wear a physical presence of a party either personally or through a pleader but such presence with

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2. (1878) 6 Cal. 585, 590.

3. A. I. R. 1926 Rang. 215, 216.

4. A. I. R. 1932 Lah. 373. See also Mulla's Notes on "Pleaders appointed to act and pleaders engaged to plead" at pp. 554-55 of the Eleventh edition (1941) of the *Code of Civil Procedure, 1908* and the Notes on the word *Appearance* in Iyer's Law Lexicon at p. 76.

5. 13 Bom. L. R. 1222.



the preparation necessary to represent his case to the court. In view of this it is clear that a party to a proceeding before a Board under this Act cannot authorize a pleader or other legal practitioner to appear on his behalf, himself remaining absent. It is however doubtful whether, he can, while himself remaining present before the Board or appearing through a recognised agent according to the provisions of proviso 2 to this section, in the sense of being ready at all material times to answer all the questions that the Board may think fit to put to him, take the assistance of a legal practitioner in filing an application under S. 17 or 23 and doing all other work in the office of the Board in connection therewith and in representing to the Board the legal aspect of his case.

*Proviso 1.*—A party who is in real need of legal assistance can more easily get it if he applies under this proviso for permission for taking it and submits to an examination by the Board as to his capacity or otherwise to represent his own case. If a law-point is involved in the proceeding even a literate party would not find difficulty in getting such permission because even such a party cannot be deemed to be competent to represent before the Board the legal aspect of his case in such a manner as would not leave room for an apprehension that injustice would be done to him if he is not allowed the assistance of a legal practitioner and therefore the Board cannot come to any other conclusions on examining the party than that he is not sufficiently competent to represent his case and that in the interest of justice it is necessary to allow him the assistance of a legal practitioner in whom he may have confidence. The proviso requires that the permission to be granted should be on the condition that the party shall bear his own costs of engaging a legal practitioner of any of the above classes. This restriction on the power of a Board to use its own discretion in the matter of allowing costs to a party does not seem to have any justification for it.

*Proviso 2.*—This proviso as it now is, is entirely new. It is inserted in order to enable a party to appear before a Board by an authorised agent. It imposes no condition on its operation and can therefore be availed of by any party whether he is or is not himself

competent to be present before the Board personally. Parties in whose names businesses are conducted by other persons, whether on the ground of age or incapacity or absence from the place of business, need not now feel embarrassed even if they do not obtain permission to engage a legal practitioner to represent them, for they can, under this proviso, authorise their nominees to appear before the Boards on their behalf. The authority required to be given is of the same nature as a general power of attorney required to be executed for the purpose of appearance in a civil court under Or. III r. 1 in Schedule I to the *Civil Procedure Code, 1908*. But instead of a before a Sub-Registrar only this power of attorney can be signed by the party himself even before a Magistrate or a Village Munsiff. If the party to the proceeding before the Board is a co-operative society, it should be signed either by its Chairman or Vice-Chairman.

Ordinarily a power of attorney is required to be written on a stamped paper according to the provisions of Art. 48 in Schedule I to the *Indian Stamp Act, 1899* but an exception of this power of attorney executed under proviso 2 to S. 67 of this Act has been made and the whole of the stamp duty payable on it is remitted by the Rev. Dept. Notification No. 947 of 1945 dated 3rd December 1945 issued under S. 9 (a) of the said Act and published at p. 217 of the Bombay Government Gazette Pt. IV A dated 6th December 1945.

There is nothing in S. 68 of the *D. A. R. Act* corresponding to these two provisos.

There is no provision in this Act corresponding to S. 69 of the *D. A. R. Act*, according which a Subordinate Judge can direct the Government Pleader or any other fit and willing person to appear on behalf of an agriculturist, who is not able to engage a pleader, though he is opposed in a suit to a party appearing by a pleader or advocate, provided he consents to his engagement. That section is in force only in the four districts to which the Act was first extended. It makes no provision for remunerating the Government Pleader or other person so directed. The practice in such cases in the Satara district, as known to the author, is for the

Subordinate Judge to call upon the opposing creditor to deposit an amount sufficient for the above purpose and to give credit to the creditor for the same in his account with the debtor and treating it as part of his claim include it in the decretal amount.

*Debt Relief Assistants.* — Before proceeding to the next section it is necessary to make a few remarks as to the legal position of the Debt Relief Assistants appointed by the late and the present Provincial Governments at some of the places where Debt Adjustment Boards had been established. Four of such D. R. Assistants had already been appointed before the Review Committee referred to at p.4 of the Introduction was set up. The members of the Bar and some intelligent and forward members of the litigating public at some of the places had complained to the Committee that these D. A. R.'s were being made use of, by the Boards with which they were concerned, as standing Government Pleaders authorised to appear for the debtors of the Backward classes to the prejudice of their opponents who were under the disability resulting from the operation of S. 67. The Committee therefore inquired into the matter and having thought over the materials placed or brought to its notice came to the conclusion that although there could be no legal objection to such officers rendering such assistance to the debtors of the Backward classes as the members of the legal profession were entitled to render to their clients it was objectionable on the part of the Boards to call upon such officers to examine and cross-examine witnesses on behalf of and argue out the legal aspects of the cases of the debtors of the said classes and take those aspects into consideration while arriving at a decision, if they did not at the same time permit the opponents of such debtors to take such assistance. It was also clear to the Committee from a perusal of G. R. R. D. No. 3791/33 dated 13th December 1941 by which the appointments of such officers had been first decided to be made that it was not the intention of Government that the Boards should look upon the officers as standing Government Pleaders instructed to appear, act and plead for all the debtors of the said classes. It accordingly drew the attention of Government to the said complaints, recorded its considered view that they were justified to the extent above-mentioned and

recommended "that the attention of the Boards should be specifically drawn to the particular wording of the said Government Resolution and that they should be asked to discontinue the practice hitherto followed. This was in October 1943.

After the Act was amended by Bom. Act VIII of 1945 and put into operation in the previously-selected and a considerably large number of other selected areas and D. A. Boards were established for them, the said Government appointed 16 more D. R. A.'s and announced their appointments and postings by a Press-note published in the issue of the 'Bombay Chronicle' dated the 27th September 1945. The initial relevant passage thereof read as follows :—

"In order to protect the interests of the Backward class debtors and ex-soldiers concerned in proceedings before Debt. Adjustment Boards, the Government of Bombay has sanctioned the appointment of 16 Debt Relief Assistants. *These Assistants* who are to be appointed by the District Judges from practising Pleaders not connected with money-lending, *will assist Backward Class and ex-soldiers debtors* in the Districts of Panch Mahals, Surat, Thana, Nasik, Satara, East and West Khandesh and Ratnagiri *to prepare their applications for adjustment of debts and the statements to be furnished by them to the Debt Adjustment Boards and will also act as a Government agency to watch the interests of backward debtors before the Boards*".

These appointments were originally made for 6 months only but presumably they have been continued to this day and some more have been made.

There are thus D. R. A.'s discharging the above functions in many areas. Obviously there is no statutory authority behind their appointments and the wording of the Press-note makes it clear that they are not intended to be treated as standing Government Pleaders entitled as of right to appear, plead and act for the Backward class and ex-soldier class debtors but intended to be looked up to by the Backward class and ex-soldier debtors as their legal expert friend who can be expected to assist them in drafting applications, filing up statements of and otherwise to act for them and also to *watch the interests* before the Boards of all the Backward class debtors generally but not to appear for and plead the cause of anybody. D. R. A.'s cannot enter into any private arrangement with any such debtor and plead for him because during the period of their appointments they are, by the terms of the said Press-note, forbidden to practice.

There is no provision in this Act corresponding to S. 69 of the D. A. R. Act according to which a Subordinate Judge, trying a suit or proceeding to which an agriculturist without sufficient means to engage a professional lawyer is a party, is authorised to direct the Government Pleader or any other fit person to appear on behalf of such agriculturist with his consent. This section is in force only in the four districts of Poona, Satara, Sholapur and Ahmednagar and there the practice in such cases, so far as this author is aware, is to remunerate the pleader so directed, with fee at the prescribed rate, which the creditor in such a case is called upon to deposit and authorised to add to the decretal amount.

67 A\*. (1) *If any party to a proceeding before the Board or the Court, who, being engaged in one of the Defence Services, cannot on account of war conditions appear or appoint an agent, any person interested in such party may apply to the Collector for the grant of a certificate authorising him to act as the agent of that party for the purposes of that proceeding.*

Appearance on behalf of members of Defence Services who cannot appear or appoint an agent on account of war conditions.

(2) *If, after making such inquiries as he may consider necessary, the Collector is satisfied that the party to the proceeding, before the Board or the Court is engaged in one of the Defence Services and cannot on account of war conditions, appear or appoint an agent and the person applying for the certificate of authority is interested in such party and is otherwise suitable to act on his behalf, the Collector shall require that person to furnish a bond in such form as may be prescribed, and on his furnishing such bond the Collector shall issue a certificate authorising him to act as the agent of that*

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\* This section was added by S. 31 of Bom. Act VIII of 1945.

*party in the proceeding before the Board or the Court and the Board or the Court, as the case may be, shall allow such party to appear as the agent of that party.*

### COMMENTARY

*Scope of the section* :—This is an entirely new section added by S. 31 of the amending Act of 1945 in order to provide for the contingency in which a party to a proceeding before a Board or a Court under this Act may have been engaged in any of the three Defence Services and may not be able to appear personally before the Board or the Court or even to appoint an agent to appear on this behalf as provided for the benefit of all parties by proviso 2 to S. 67, “on account of war conditions,” *i. e. to say*, he may either be too far away from the place where the Board may have been established or from that where the Court may be situated or may not have the liberty to disclose the place where he may be serving or may be too actively engaged in his duties to mind his domestic officers.

The provision is that if such is the case a person interested in him may apply to the Collector for obtaining a certificate of authority to appear and guard his interest and if the Collector is satisfied of the *bona fides* of such application and of the suitability of the person making it he may issue such a certificate to him on taking from him a bond in the prescribed form and that on the production of such a certificate the Board or the Court concerned shall allow that person to act as the agent of the party. This is a third special concession made by the amending Act in favour of a person engaged in one of the Defence Services, the first two being those made by adding a proviso and an explanation to clause (a) of clause sub-section 6 of S. 2.

*Sub-section (1)*. —This is a permissive provision in very simple terms. The conditions which must be satisfied for enabling a person to make an application for a certificate to the Collector are :—

- (1) There must be a proceeding pending before a Board or a Court ;

- (2) (a) One of the parties thereto must be a person engaged in one of the Defence Services, (b) he must be unable to appear before the Board or the Court personally or to appoint an agent to appear for him as permitted by proviso 2 to S. 67 and (c) that inability must be due to war conditions ;
- (3) The person applying for the certificate must be interested in such party.

*Sub-section (2).*—This sub-section prescribes the procedure to be followed by the Collector on receipt of such an application as is referred to in sub-section (1) and directs the Board or the Court to recognize that certificate in the proceeding before it to which it relates.

The procedure consists of making such inquiries concerning the facts referred to in the three main conditions mentioned above as he thinks proper. Even if he finds that those conditions are fulfilled, he has further to satisfy himself that the applicant is otherwise a suitable person to represent that party in the proceeding, that is to say, that he has further to satisfy himself that he has no interest adverse to that of the party, that he is competent to represent the party, that he has no ulterior motive in thus coming forward to interfere in the affairs of the party. If he is so satisfied then he has to call upon the applicant to pass a bond in such form as may have been prescribed by a rule made in this behalf under the newly-added clause (*mm*) of sub-section (2) of S. 83 and then issue the required certificate. No particular form seems to be in contemplation for it but it must nevertheless contain all the particulars necessary to enable the Board or the Court concerned to be satisfied that it relates to a particular proceeding pending before it and that the holder is authorised to act as the agent of a particular party thereto. When so satisfied the Board or the Court concerned must allow the holder thereof to act as the agent of that party in that proceeding.

Here ends the most important and the longest chapter of this Act.

## CHAPTER IV

### INSOLVENCY PROCEEDINGS.

68\*. (1) If at any stage of the proceeding under Chapter III\*...for any reason the Board finds that the debts due from the debtor cannot be liquidated by annual instalments not exceeding *twelve* in number, the Board shall make an order adjudicating the debtor to be an insolvent.

Board to declare debtor insolvent in certain circumstances.

(2) If the Court to which an award is transmitted for execution finds that the two consecutive or any three instalments cannot be recovered by the sale of the movable property of the debtor, the Court may pass an order adjudicating the debtor to be an insolvent.

(3) After the debtor has been adjudicated an insolvent either by the Board or the Court, the Board or the Court, as the case may be, shall direct that one-half of the property of the debtor liable to attachment and sale under section 60 of the *Code of Civil Procedure, 1908*, shall be immediately sold free of all incumbrances in liquidation of all the debts outstanding against such debtor :

V of 1908.

Provided that if after one-half of the assets of the debtor are sold the property remaining with the debtor exceeds 6 acres of irrigated land or 18 acres of dry-land or any land assessed at Rs. 30, whichever is greater, then all the excess property over and above the aforesaid land shall also be sold free of all incumbrances.



*Provided further that the Board or the Court, as the case may be, shall not order the sale of any land to which section 73A of the Bombay Land Revenue Code, 1879, applies, without the previous sanction of the Collector.*

Bom. V of 1879.

## COMMENTARY

*Heading of this Chapter :—*This chapter consisting of only 5 sections relates to a further step in the special and bold remedy provided by this Act for putting an end as early as possible to agricultural indebtedness which has been the cause of much anxiety to Government for a long time past. The Royal Commission on Agriculture presided over by Lord Linlithgow devoted in its Report published in 1928 a special chapter to an investigation of the causes of that wide-spread social malady and to suggestions as to the possible remedies for eradicating it as far as possible. One of the remedies suggested by it was the passing of a simple piece of insolvency legislation adapted to the special conditions of the rural life of the country. The same subject was for consideration before the Central Banking Inquiry Committee also along with several others. That Committee appointed a Provincial Banking Inquiry Committee for each province of India in order that the local conditions of each province may be thoroughly brought to light and the special remedies suitable to each province may be adopted. The Committee appointed for the Province of Bombay had accordingly the question for consideration before it and it recommended the adoption of the suggestion of the Royal Commission on Agriculture to pass a simple law of rural

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\*The following words and figures, namely :—

*the Board is satisfied that the paying capacity of the debtor is inadequate to pay the total amount of his debts as scaled down under section 52, or if, which existed between the words "Chapter III" and "for any reason" in sub-section (1) were deleted and the word twelve therein was substituted for the word twenty-five by S. 32 (i) of Bom. Act VIII of 1945 and the second proviso to sub-section (3) was added by S. 32 (ii) of the said Act.*

insolvency in addition to several other remedies for the eradication of agricultural indebtedness<sup>1</sup>. For some 8 years the suggestion remained unattended to. When the popular Congress Government came into power 1939 it took courage in both hands and drafted Bill No. XIII of 1939 in order to relieve the agriculturists of their chronic indebtedness. This chapter on *Rural Insolvency* formed part of it as originally drafted.

*Previous law on this subject*:—It seems that there is a chapter in the *Dekkhan Agriculturist Relief Act, 1879*, headed *Of Insolvency* which bears the same number therein as this chapter bears in this. None of the sections in that chapter was however ever made applicable to any other district of this Province than those four, namely Poona, Satara, Sholapur and Ahmednagar, for the benefit of the agriculturists residing wherein only that Act had been originally passed. Even in those districts the provisions of that chapter have remained a dead letter because in practice those provisions were not found to be conducive to any appreciable benefit to the agriculturists and because they depended for their operation on the willingness of those persons themselves. The provisions of this chapter were therefore so modelled as not to depend for their operation on the willingness or unwillingness of the agricultural debtors but upon certain circumstances that may be brought to light during the course of the proceedings upto the stage of the making of an award or of those subsequent to it upto the time of the total liquidation of the debts of a debtor ordered to be paid in certain instalments. There are also some other salutary provisions in this chapter which will be explained at their proper places. It can therefore be confidently hoped that the operation of the provisions of this chapter will be productive of the beneficial results expected of them in the areas to which they may be extended and in which they may be put into force.

*Scope of this section and the marginal note thereto* :—This section not only lays down the circumstances which the Board or the

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1. Report of the B. P. B. I. Committee, Para 244 at pp. 187-88.

Court is directed to consider sufficient for declaring a debtor, in a proceeding before it, insolvent, as the marginal note seems to indicate but also provides for the further procedure which they must follow after making such a declaration and sets by two provisos limits on the property of the debtor which can be ordered to be sold for the distribution of his assets amongst his creditors.

*Sub-section (1).*—This is the sub-section which directs the Board conducting any of the proceedings under Chapter III, to make an order adjudicating the debtor therein an insolvent, if the condition mentioned therein is fulfilled. The condition is that the debts found due by the latter must not be capable of being liquidated by payment in twelve annual instalments. If it is fulfilled, the Board has no discretion to use but is bound to declare the debtor an insolvent.

It appears that in order that the Board may be able to form a conclusion one way or the other on that point it must take into consideration the total debts payable by the debtor including those mentioned in S. 3, on the one hand and his net annual income as determinable under the second proviso to clause (h) of sub-section (2) of S. 54 read together with its explanation.

*Change in the law:—*It must be noted that sub-section (1) has been amended in two matters, namely (1) that the Board was directed to take into consideration the paying capacity of the debtor for determining whether it was adequate or inadequate for the payment of the debts of the debtor, which is not now necessary and (2) that the maximum number of annual instalments in which the total debts should be payable out of the net annual income of the debtor has been reduced from *twenty-five* to *twelve*. The second change is in conformity with that made in S. 54 (2) (h).

*Sub-section (2):—*It has been explained in the commentary on S. 63 that the Board would become *functus officio* after transmitting an award to the Court for registration and that thereafter the Court would become seized of the matter. This sub-section can come into operation only when that takes place. Now, it provides that if the Court to which an award is transmitted for execution finds that either any two consecutive

or any three instalments cannot be recovered by the sale of the movable property of the debtor, it may pass an order adjudicating the debtor to be an insolvent. Such a description of a Court was proper prior to the amendment of S. 63 of the Act by S. 27 of Bom. Act VIII of 1945. Since the amendment however it seems to be improper because the amended section 63 has left no power to the Court to execute an award. What it is directed to do on receiving an award from a Board is to register it and then to transfer it for execution to the Collector. It is therefore doubtful whether, in view of that, the Court to which an award would be sent only for registration and an order of transfer for execution to the Collector can exercise the power mentioned in the sub-section. There is one thing in favour of such a view and that is that the amendment in S. 63 directs the Collector to proceed under SS. 69 to 72 of and Schedule III to the *Civil Procedure Code, 1908* after the transfer of the award has been made to him. According to them the Collector has to return the decree transferred to him for execution to the Court from which it had been received and also to carry out any intermediate orders regarding stay of execution etc., that the Court may deem fit to pass and communicate to him and so, the Court can while transferring an award in any particular case, direct the Collector to try to recover the amount of any two consecutive or any three instalments that may be due from the movable property only of the debtor and if it is reported to the Court that it cannot be done it can declare the debtor to be an insolvent. It can make such a declaration even without asking the Collector to put the property to sale if the amount at which the movable property of the debtor may have been valued by the Board is so obviously small that no other conclusion except that which is required for the purpose of a declaration of the above nature can be arrived at.

*Sub-section (3) :—*The next step after making an adjudication order to be taken by the Board or the Court, as the case may be, is to direct that one half of the property of the debtor, both movable and immovable, which is liable to attachment and sale under S. 60 of the *Civil Procedure Code, 1908* shall be sold free of all incumbrances for the satisfaction of all the debts outstanding against him.

What property of a judgment-debtor is exempted from attachment and sale if he happens to be an agriculturist has been explained in the Commentary on S. 50 (1) under the heading *Scope of the section*.<sup>4</sup> The rest of his property of both kinds must be deemed attachable and saleable in execution of a decree against him under S. 60 of the *Code*. Under this sub-section the Board or the Court has to direct the sale, free of all incumbrances, of one-half of it only and the balance of the sale-proceeds thereof left after deducting the costs of sale would be available for distribution amongst all the creditors of the debtor including Government and the others mentioned in S. 3 of this Act, due regard being had to the order of priority laid down in the provisoes to S. 54 (2) (g) as provided in S. 70 *infra*.

*Proviso 1* :—This sub-section has two provisoes the first of which relates to the quantum of the property liable to be sold. It provides that if after one-half of the property of the debtor is sold, the debtor is found to remain in possession of more than 6 acres of irrigated land or more than 18 acres of dry land *i. e.* land depending for the crops to grow on rain water only, or more than any kind of land assessed at Rs. 30, whichever is the greater of the three quantities, then his property of all kinds in excess of that quantity, *i. e. to say*, all kinds of land in excess of the above quantity, all houses, if any, other than that which may be exempt from attachment and sale, all his "movable property and all his outstandings if any, are to further directed to be sold, free of all incumbrances.

This proviso seems to have been based on S. 2 (2) (i) of the *Bombay Small Holders' Relief Act, 1938*, which had been passed for granting temporary relief till the passing of a measure of a more permanent nature and whose operation is being extended from year to year, the last extension for one year ending on 31st March 1947 having been made in 1946 owing to the present Provincial Government having till then decided to put into operation the substantial portion of the present Act only in specific areas selected at intervals and amended S. 84 thereof suitably by S. 4 of *Bombay Act VI of 1941*.

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4. See p. 227 *supra*.

*Proviso 2* :—This proviso was added for the first time by S. 32 (ii) of Bom. Act. VIII of 1945. It puts a limitation on the power to make an order for the sale of the debtor's property which can be made by the Board or the Court. The limitation is that if the property of the debtor which is proposed to be ordered to be sold under sub-section (3) comprises or consists of any land to which S. 73 A of the *Bombay Land Revenue Code, 1879* applies, the Board or the Court shall not order the sale thereof without obtaining the previous permission of the Collector of the district in which the Board may be situated.

To which kind of lands the said section of the *Bombay Land Revenue Code* is applicable, will be clear on a reference to the Commentary on S. 66 to which a similar additional proviso was added by S. 29 (ii) of the Act of 1945.

69\*. The order of adjudication made under section 68, whether by the Board or the Court  
Procedure in insolvency proceedings. \*...shall be deemed to be an order made by a competent court in the exercise of its powers under section 27 of the *Provincial Insolvency Act, 1920*, and thereupon the provisions of the *Provincial Insolvency Act, 1920*, as modified V of 1920, by the provisions of this Chapter shall, so far as may be, apply as if the debtor was an insolvent in respect of whom an order of adjudication was made under section 27 of that Act.

## COMMENTARY

*The meaning of the word "Court" in this section* :—The anomaly which the original wording of this section had created has now ceased to exist and it is clear that the opinion expressed in the

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\*The words "in appeal" which existed after the words "or the Court" in th section were deleted by S. 33 of Bom. Act VIII of 1945.

first edition of this work, namely that "the Court" meant here is the Court to which the award is transmitted for registration under S. 62 is correct. According to the definition of the word "Court" given in S. 2 (4), "the Court" here means "the civil court of competent jurisdiction," because S. 62 is not one of the sections, mentioned or referred to in clauses (a) and (aa) thereof. Such a court is more other than the District Court to which an appeal lies from the award made by a Board under S. 9 of this Act. [Sec cl. (a) of S. 2 (4)].

*Scope of this section* :—Although this section has not been sub-divided the sentence constituting it consists of two parts, namely :— (1) which gives to the order of adjudication made by the Board up to the stage of making an award or by the Court after the award is transmitted to it for registration the same legal effect as an order passed by a competent court under S. 27 of the *Provincial Insolvency Act, 1920*, and (2) which makes the provisions of the said Act, subject to those of this chapter of this Act, applicable to the case of an agricultural debtor declared an insolvent under S. 68 of this Act, so far as the same may be applicable in view of the circumstances of each case.

By virtue of the provision in the second part the Board or the Court would be bound to specify in the order of adjudication the period within which the debtor should apply for his discharge and would have the power to extend the period if sufficient cause is shown for doing so, as provided in S. 27 of the *Insolvency Act*.

While applying the other provisions of that Act to the case of a debtor declared to be an insolvent under S. 68 of this Act, it must be borne in mind that the adjudication in this case is made *suo moto* by the Board or the Court if certain conditions are found to have been fulfilled and not on an application made therefor either by a debtor or by a creditor and that the stages at which the Board or Court could make such an order are according to the provisions of S. 68 (1) and (2) such that the materials for a distribution of the assets of the debtor between his creditors must be at hand before the Board or the Court. Practically therefore as soon as the property

ordered to be sold under S. 68 (3) read with the two provisoes is sold by the Collector and he has intimated what the sale-proceeds thereof are the Board or the Court has to proceed to distribute the debtor's assets as provided in S. 70 to which we now pass on.

70. The proceeds realised by the sale of the property of the insolvent under section 68 shall be distributed in the order of priority specified in the provisoes to clause (g) of sub-section (2) of section 54.

Distribution of  
assets of the in-  
solvent.

### COMMENTARY

*Scope of the section* :—This is one of the sections in this chapter modifying the provisions of the *Provincial Insolvency Act, 1920* so far as, the order in which the assets of the debtor declared an insolvent under S. 68 of this Act are to be distributed amongst his creditors including those mentioned in S. 3 thereof, is concerned. The modification is that the same priority is to be observed in this case as is laid down in the two provisoes to S. 54 (2) (g). They have been sufficiently explained in the Commentary on that section.<sup>1</sup> For comparison and contrast, if necessary see SS. 61 to 67A on *Distribution of Property* in Part III of the *Provincial Insolvency Act, 1920*.

71. No application or proceeding in regard to the insolvency of the debtor shall lie in or shall be dealt with by any other Court.

Bar to applica-  
tion in insolvency  
in other Courts.

### COMMENTARY

*Scope of the section* :—This section prohibits the entertainment by any other court in the Province of an application for adjudicating an insolvent the same debtor as may have been adjudicated an insolvent either by a Board or a Court under the provisions of S. 68 (1) or S. 68 (2). It also goes further and prohibits any other

<sup>1</sup>. See pp. 238-39 and 243 *supra*.



court in the Province from dealing with an application for the same purpose which may have been already filed before such adjudication. By virtue of the latter prohibition any court in which such an application is pending would cease to have jurisdiction to proceed further with it from the date of an order under S. 68 (1) or (2) of this Act. The consequence thereof would be that such a court would have to dismiss such an application. It cannot be deemed to fall under S. 37 of this Act because it would neither be a "suit" nor an "application for execution" nor a "proceeding," to which only the said section is applicable.

In case of any doubt as to this effect on the jurisdiction of the courts invested with jurisdiction under the *Provincial Insolvency Act, 1920*, see the rules of interpretation given under the heading *Restraint on jurisdiction* in the Commentary on S. 12, and under the heading *Special tribunals and the civil courts* and *Special Remedy provided in this Act* in the Commentary on S. 17.<sup>1</sup>

The provisions of the *Provincial Insolvency Act, 1920*, directly or indirectly affected by this section are those contained in SS. 3 to 5 constituting Part I of that Act, SS. 6 to 44 constituting Part II thereof, SS. 45 to 68 constituting Part III thereof and S. 74 constituting Part V thereof.

72. No appeal shall lie from any order passed under this Chapter except on the ground that the insolvent has failed to disclose all the material facts relating to his assets and liabilities.

Appeals barred.

### COMMENTARY

*Scope of the section* :—The provisions of the *Provincial Insolvency Act, 1920* having been made applicable to an insolvency proceeding under this chapter, so far as they may be applicable, those of S. 75 constituting Part VI of that Act which provides for appeals

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1. See pp. 101, 112-14 and 114-15 *supra* respectively.

from several orders made in the course of insolvency proceedings would be held applicable to them. The Legislature while enacting the provisions of this chapter did not however intend that the orders which a Board or a Court would pass under this chapter should be appealable to such a large extent, for in that case the proceedings would be lengthened and the object in providing this simple remedy would be defeated. It has accordingly distinctly provided in this section that except on one ground no appeal shall lie from an order passed under this chapter and that ground is that the insolvent must have failed to disclose all the material facts relating to his assets and liabilities.

## CHAPTER V

### MISCELLANEOUS

73. Except as otherwise provided by this Act and notwithstanding anything contained in any other law no civil court shall entertain or proceed with any suit or proceeding in respect of—

- (i) any matter pending before the Board or the Court under this Act, or
- (ii) the validity of any procedure or the legality of any award, order or decision of the Board or of the Court, or
- (iii) the recovery of any debt made payable under the award.

### COMMENTARY

*Heading of this chapter :—*This, the fifth, is the last chapter of this Act. Originally it contained 14 sections numbered 73 to 86. To them has now been added one more, namely 73A which is inserted between 73 and 74. The heading given to this chapter comprising those 15 sections is *Miscellaneous*. It is a non-technical word derived, according to *Webster's Dictionary*, from the Latin word *miscellaneous* meaning 'mixed' or from *miscellus* also meaning 'mixed' or from *miscere* (very akin to the Sanskrit *mis'ra*), which also means either (1) mixed, mingled, consisting of several diverse things, *i. e.* promiscuous or heterogeneous, as a miscellaneous collection, 'a miscellaneous rabble' (Milton), or (2) having various qualities or dealing with or interested in diverse topics or subjects, as a miscellaneous writer." It will appear even on a superficial observation of the marginal notes to the sections in this chapter that the above heading has been given in order to convey the idea that the provisions contained in this chapter from the one end

to the other relate to, not any specific topic like those of the proceeding three but to diverse topics unconnected logically with one another, such as limitation, granting of a certificate to a creditor, prohibition of the alienation of his standing crops by a debtor etc.

*Scope of this section* :—This section has been inserted with two objects in view, namely :—(1) in order to prevent persons from starting suits or proceedings in the ordinary civil courts with respect to (i) any matter already before the Board or the Court under this Act, or (ii) the validity of any procedure followed by either of them in any proceeding or the legality of an award, order or decision made by any of them or (iii) the recovery of any debt made payable under an award made under this Act, and (2) in order to prohibit the ordinary civil court from proceeding with any such suit or proceeding if pending at the date of commencement of the operation of this Act within their jurisdiction. The prohibition in both the cases is absolute because it is to operate “notwithstanding anything contained in any other law.” To this however there is an exception implied by the words “Except as otherwise provided by this Act.” Thus though the provisions of any other law to the contrary cannot be deemed to prevent the bar contained in this section from operating, those contained in any other section of this Act itself can. The contrary provisions contemplated here are those of SS. 9 to 15.

A provision of this nature is absolutely necessary in a special piece of remedial legislation such as this as otherwise the works of the special tribunals set up under them would be frequently hampered by the intervention of suits and proceedings in civil courts and thus the object of the Legislature to grant speedy relief would be defeated. It should be borne in mind while interpreting this section and applying it to the facts of any particular case that may arise that it restricts the ordinary civil right of an aggrieved party to approach a civil court for the redress of his grievance if the law provides a remedy for it by way of a suit or a miscellaneous proceeding. It must, therefore, according to the well-established canons of construction be construed strictly and in favour of the subject.<sup>1</sup>

1. *Dave v. Emperor* (A. I. R. 1944 Nag. 337, 342).

The expression "suit or proceeding" occurring in this section was interpreted by the Bombay High Court in three cases with a view to determine whether it meant a "suit or proceeding" pending in a civil court to which S. 37 of this Act as it originally stood applied and it was held that it did not and that therefore a civil court was not debarred by this section from proceeding with a suit or proceeding before it with a view to determine whether it was or was not liable to be transferred to a competent Board under S. 37 as it then stood.<sup>2</sup>

That section has now been so amended as to deprive the civil courts of their power under the section to determine the two preliminary points mentioned therein. However even under S. 37 (1) as it now is, a civil or revenue court has power to determine whether a suit or proceeding before it relates to the recovery of a debt from a person and whether it involves the determination of the questions whether that person is a debtor under this Act and whether his total liabilities on the relevant date did or did not exceed Rs. 15,000. The said rulings are therefore still good law to that extent.

See also the note on the same expression under the heading *Construction of words not specifically defined and not covered by sub-section (16)* and the sub-heading *Non-technical* thereunder in the Commentary on S. 2 at pp. 57-59 *supra*.

*73A. The provisions of Order XXXII in the First Schedule to the Code of Civil*

Provision as to minors etc. *Procedure, 1908 shall apply* V of 1908.  
*to the proceedings under this Act as if such proceedings were proceedings in a suit in a Civil Court.*

COMMENTARY

This section was added by S. 34 of Bom. Act VIII of 1945. It extends the provisions of Or. XXXII in Schedule I to the *Code of Civil*

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2. *Dadiba v. Thakuji Ramji* (44 Bom. L. R. 865); *In re Reference under Or. 46 r. 1 in Sch. I to the C. P. Code, 1908* (45 Bom. L. R. 445); *Ranchhod v. Musa Jibhai* (46 Bom. L. R. 715).

*Procedure, 1908* to all the proceedings under this Act as if they were proceedings in a suit in a civil court. The note on this clause in the *Notes on Clauses* says :—"This clause is intended to safeguard the rights of minors and of persons adjudged to be of unsound mind, and of persons who, though not so adjudged, are found on inquiry by reason of unsoundness of mind or mental infirmity to be incapable of protecting their interests." A next friend of an applicant or the guardian ad-litem of an opponent should now be appointed by the Board or the Court in all the proceedings before it on following the procedure laid down in the said order in Schedule I to the *Code*, if the applicant or opponent is either a minor, or a person of unsound mind so adjudged by a competent court or a person who, though not so adjudged, is found by the Board or the Court on making an inquiry to be suffering from such a disability as would render him or her incapable of protecting his or her own interest. As all the provisions of the said order have, without exception, been made applicable to such proceedings as if they were proceedings in a civil suit in a civil court, the procedure laid down should be strictly followed, for otherwise the consequences of not doing so, would automatically follow.

74. Save as expressly provided in this Act the provisions of *Indian Limitation Act, 1908* shall apply IX of 1908.  
Application of Limitation Act. to all claims in respect of debts in the proceedings under this Act as if such proceedings were proceedings in a suit in a Civil Court.

#### COMMENTARY

*Scope of this section* :—This section extends the provisions of the *Indian Limitation Act, 1908* to all the claims that may be brought forward in connection with the debts which may be the subject-matter of proceedings under this Act, which for this purpose are to be treated as civil court proceedings although tribunals of a special nature are set up for conducting them but it should be noted that this extension is to be understood to have been made "Save as expressly provided in this Act."

*Effect of this extension* :—The effect of this extension of the provisions of the *Indian Limitation Act, 1908*, to every claim in respect of a debt in a proceeding under this Act, is that the Board will have to examine each claim with a view to see whether it is or is not in time according to the particular article in the first Schedule to the said Act applicable to it, computed with due regard to the provisions contained in Part III (SS. 12 to 25) of that Act and that the claimant would have to be given the benefit of such of the provisions contained in Part II thereof (SS. 3 to 11) as may be applicable to his claim.

75. In computing the period of limitation for institution of any suit or proceeding in respect of any debt due from any person who is held not to be a debtor by the Board or in an appeal by the Court, the period during which the proceeding were pending before the Board or Court or the Collector in respect of such debt shall be excluded.

Period of proceeding before Board or Court to be excluded.

#### COMMENTARY

*Scope of the section* :—The provision in this section is intended for the benefit of any creditor who is required to institute a suit or a proceeding in an ordinary civil court after it has been finally decided that his debtor is not a debtor under or is not otherwise entitled to the benefit of this Act. It has reference to the provisions of S. 14 of the *Limitation Act*, which permits the exclusion of any period spent in prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the same defendant or party, which from defect of jurisdiction or other cause of a like nature, the court was unable to entertain. It clears up a doubt as to whether those provisions would or would not be applicable when a creditor was required to allow the fixed period to pass away by his being engaged in resisting the contention of his debtor that he was a debtor under this Act either (1) before

a competent Board in the course of an application under S. 17 (1) made by the debtor or (2) before the Court to which an appeal lay against an adverse decision of the Board under S. 9 in the course of an appeal under that section or (3) before the Collector in the course of any proceeding under this Act, by providing in express terms that the period so spent shall be excluded while computing the period of limitation for the suit or proceeding that the creditor may institute subsequently in an ordinary civil court.

76. (1) If any creditor claims that for advancing the amount of any debt of a debtor he had borrowed the whole or part of the amount

Certificate to the creditor who borrowed sums from another for lending them to debtor.

of such debt from another person, the Board shall grant a certificate in the form prescribed to such creditor. Such certificate shall specify the name of such creditor, the amount claimed as due by him from the debtor, the amount awarded and the rate of interest allowed thereon by the Board and the name of the person from whom the amount of such debt was claimed to have been borrowed.

(2) A certificate granted under this section may be produced in any proceeding and the Court before which such proceeding is pending may take it into consideration in awarding the claim for interest and instalments, if any, between such creditor and such person.

#### COMMENTARY

*Scope of this section* :—The provisions of this section require the Board to grant a certificate in a prescribed form to a creditor whose debt it may have adjusted and ordered to be paid in particular instalments according to the provisions of Chapter III of this Act and who may have alleged that he had advanced the principal of that debt on borrowing the amount thereof from another person at



a particular rate of interest and agreed to repay it at a particular time or in a particular manner, and authorise the court, before which such a certificate may be produced, to take it into consideration while passing a decree against the creditor holding it, so far as it relates to interest and instalments. Each of these two provisions is embodied in a separate sub-section of this section.

*Sub-section 1* :—This sub-section contains the provision which directs the Board to grant the certificate in a prescribed form to the creditor who claims that he had advanced money to the debtor on borrowing it or a part of it from another person and also specifies the particulars which must be mentioned therein.

*Sub-section (2)* :—This sub-section lays down what use can be made of the certificate granted under the preceding sub-section. According to it is not compulsory for the civil court before which the certificate is produced to take it into consideration but equity demands that it should. It should be noted however that even after it takes the certificate into consideration, the only concessions that it can give to the holder thereof is by way of reduction of the rate of interest and a facility to repay the amount found payable in easier instalments than in ordinary cases.

77\*. (1) No debtor who is a *party to any proceedings or award* under this Act and who is indebted to a resource society or any person authorised to advance loans under section 78 shall alienate or encumber the standing crops or the produce of his land without the previous permission of the society or the person, as the case may be. Any such alienation made without such permission shall be void.

Debtor not to alienate the standing crops, etc.

(2) Any debtor who alienates or incumbers the standing crop or the produce of his land in contravention of

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\*The words *party to any proceeding or award* were substituted in this section for the original words *party to an award* in sub-section (1) of this section by S. 35 of Bom. Act VIII of 1945.

sub-section (1) or a person who knowingly permits such alienation or encumbrance to be created in his favour, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 500.

### COMMENTARY

*Scope of the section* :—This section prohibits and declares to be void any alienation made of or any encumbrance created on the standing crops or the produce of his land by a debtor who is a party to a proceeding or an award under this Act in case he happens to be indebted to a resource society or to a person authorised to advance loans under the next section, unless the same has been done with the permission of the society or the person concerned and further backs up that prohibitive provision by a penal clause making it an offence both to make such an alienation or create such an encumbrance and to permit such an alienation to be made or such encumbrance to be created in one's favour. The first sub-section of this section is devoted to the prohibition and declaration, and the second to the sanction above-mentioned.

*Sub-section (1)* :—It should be noted that there is a prohibition in this sub-section as to making an alienation of or creating an encumbrance on standing crops or the produce of the land after the crops are harvested, only if the debtor happens to have amongst his creditors a resource society or a person who has advanced a loan under a permission granted in exercise of the power conferred by S. 78. It is not therefore an absolute prohibition operating against all the debtors who are parties to any proceeding or against whom awards may be made under this Act or in the interest of all the classes of creditors to whom the such debtors may be indebted. Moreover it is not absolute in this sense also that there is no prohibition under all circumstances whatever but one against doing the acts without the permission of the creditors named. However if the limited conditions laid down therein are fulfilled in any particular case, then the parties thereto cannot escape from the consequence laid down,

namely that the alienation or encumbrance so made shall be void and of no effect even though it may be in favour a *bona fide* transferee for value without notice.

*Sub-section (2) :—*This sub-section further ensures the observance of the above conditions by laying down a sanction which prescribes a maximum punishment of imprisonment for six months or of a fine upto Rs. 500, for the transferor in all cases of transgression, and for the transferee also if he had knowledge of the breach of law and had still permitted its being committed for his benefit.

In case of any doubt as to the interpretation of this penal clause see the rules for the interpretation of such enactments given in the Commentary on S. 8.<sup>1</sup>

*Who can try the above kind of offenders? :—*This sub-section is silent as to who would be competent to try the offenders under it and pass the adequate sentence in case of conviction. In the absence of any specific tribunal being invested with power to do so, the ordinary magisterial courts having jurisdiction in the area in which the alienation may have been made or the incumbrance may have been created in contravention of sub-section (1) of this section would be competent to take cognizance of the offence as an "offence against other laws" within the meaning of Schedule II to the *Criminal Procedure Code, 1898* by virtue of S. 4 (o) thereof defining an "offence", as held in the case of *Kandasami Pillai v Emperor*,<sup>2</sup> which was a case under the *Defence of India Act* in force during the first World-War (A.D. 1914-18).

78\*. (1) The Provincial Government may by notification in the *Official Gazette* authorise in any local area any person to advance loans to debtors *who are parties to any proceeding under this Act or in respect of whose debts an adjustment has been made under this Act.*

Power of Provincial Government to authorise any person to advance loans to debtors.

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1. See pp. 84-86 *supra*.

2. I. L. R. 42 Mad. 69, 74.

(2) Such authority shall be granted on such conditions as may be prescribed.

### COMMENTARY

*Scope of the section* :—This section has been inserted in order to enable the debtors whose debts are under investigation or have been adjusted under Chapter III of this Act to continue their agricultural work from year to year even on borrowing money for particular seasons. In order however that such further borrowings may not render the position of the debtors irretrievable the section itself lays down certain restrictions and further empowers the Provincial Government to lay down the conditions on which certain persons alone may be allowed to supply the needs of such debtors. For those purposes the section has been sub-divided into two sub-sections, the first of which makes the former kind of provision and the second the latter.

*Sub-section (1)* :—This sub-section provides that for the above purpose the Provincial Government may select any person for granting the authority to advance loans to such debtors residing within a specified area by publishing a notification for that purpose in the Official Gazette for this Province *i.e.* the *Bombay Government Gazette*.

The word "person" has been defined in S. 2 (8A) as including an undivided Hindu family. For the rules applicable to such inclusive definitions see the Commentary under that heading forming part of that on Explanation I to S. 2 (6) <sup>1</sup>.

*Sub-section (2)* :—The said Government is further empowered by this sub-section to impose such conditions on the authority which it may grant under sub-section (1) as it may deem fit to prescribe by Rules. For the Rules made on this point and the Forms prescribed thereby see Rules 38 to 40 and Forms No. 22 to 24.

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\* The word *person* was substituted for the words *individual, joint stock company or other association* and the words *who are parties to any proceedings under this Act* or were added after the word *debtors* in this sub-section by S. 36 of Bom. Act VIII of 1945.

1. See pp. 48-49 *supra*.

79. The Provincial Government may by notification in the *Official Gazette* delegate to the Collector or any other officer any of the powers exercisable by it or by the Collector under this Act.

Power of Provincial Government to delegate powers to the Collector or any other officer.

### COMMENTARY

*Scope of the section* :—This section empowers the Provincial Government to delegate any of the powers exercisable by it or by the Collector under this Act, to the Collector or any other officer, by publishing a notification in the *Bombay Government Gazette*. I believe what is meant is a delegation of any of the powers of the Provincial Government under this Act to the Collector of a district and of any of the powers of the Collector under this Act to any other officer who may or may not be his subordinate. Occasions for such delegation may arise when it is found difficult to exercise any of the statutory powers from a distance.

Before the first edition of the Commentary on this Act was printed Government having anticipated such occasions had delegated its own powers under S. 78 (1) to the Collectors by Government Notification bearing R. D. No. 3791/33 dated 4th April 1941 and published at p. 232 of Part IVB of the *Bombay Government Gazette* dated 10th April 1941. Similarly by R. D. No. 2235/45 dated the 15th August 1946 published at p. 144 of Pt. IVB of the said *Gazette* the present Government delegated its power to sanction or refuse to sanction alienations by debtors "to all Collectors."

80. The Chairman and other members of a Board shall be deemed to be public servants within the meaning of section 21 of the *Indian Penal Code*.

Chairman and members of Board to be public servants.

XLV of 1860.

\* 81. No suit, prosecution or legal proceeding shall lie against the Chairman or other member of a Board or against any officer of Government.

Indemnity.

vernment in respect of anything in good faith done or intended to be done under this Act.

82. Whoever—

Penalty. (a) intentionally makes any false statement in any proceeding under this Act;

(b) intentionally produces before the Board any false document;

(c) files under section 19 a statement which is false or incorrect to his knowledge; or

(d) abets any act punishable under this section shall, on conviction, be liable to imprisonment which may extend to six months or to fine or to both.

83\*. (1) The Provincial Government may from time to time make rules for the purpose of carrying into effect the purposes of this Act.

Rules.

(2) In particular and without prejudice to the generality of the forgoing provision, such rules may be made for all or any of the following purposes, namely:—

(a) the manner of publication of the notification under section 4 *and the period of practice referred to in sub-section (3) (i) (a)* and the qualifications of persons constituting a Board under sub-section (3) (iii) and the manner of appointment of assessors under sub-section (7) thereof;

(b) the procedure in proceedings before the Board under section 7 including the inspection of site by members of the Board and examination of witnesses on commission under sub-section (2) thereof, and on appeals before Courts under section 9;

- (c) the form of application under section 18 and the signing and verification thereof ;
- (d) the form of statement of debts under sub-sections (1) and (2) of section 22 ;
- (e) the form of application under sub-section (2) of section 23 and the manner of signing and verification thereof and the manner of giving notice under sub-section (3) of section 23 ;
- (f) the manner in which the notice under section 31 shall be served or published ;
- (g) the inventories of property, lists of creditors and of the debts due to and from a debtor, the examination in respect of property or creditors, the time at which the debtor shall attend before the Board and do other things in relation to property under sub-section (1) of section 33, and the books of accounts, the examination to be submitted to and the information to be supplied in respect of the debt due to a creditor by the debtor under sub-section (2) of section 33 ;
- (h) the manner of summoning persons under sub-section (1) of section 34 ;

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\*In sub-section (2) of this section the following amendments were made by S. 37 (i) to (iv) of Bom. Act VIII of 1945, namely :—

- (i) in clause (a) the words printed in italics therein after the figure 4 were inserted ;
- (ii) after clause (h) the new clause (hh) as printed above was inserted ;
- (iii) after clause (m), the new clause (mm) as printed above was inserted ;
- (iv) in clause (o) the word *person* was substituted for the words *individual, joint stock company or other association* which were originally there ;

(hh) *The manner of giving notice under sub-section (2) of section 37 ;*

(i) the time within which the Collector or co-operative society or a local authority or holder of a decree or order for maintenance is required to intimate to the Board the amount of the debt due by the debtor under section 47 ;

(j) the manner in which the market value of the property and assets of a debtor shall be determined under sub-section (5) of section 50 ;

(k) the manner of determining the value of property and other assets under section 51 ;

(l) the form of award under sub-section (2) of section 54 and under section 24 and sub-section (2) of section 55 ; and other particulars to be included in the award under section 24 and clause (n) of sub-section (2) of section 54 ;

(m) the manner of sale of property by the Collector under section 66 ;

(mm) *the form of the bond to be furnished under sub-section (2) of section 67 A ;*

(n) the form of certificate to be granted to a creditor under section 76 ;

(o) the conditions on which any *person* shall be authorised to advance loans under section 78.

(3) The rules made under this section shall, subject to the condition of previous publication, be published in the *Official Gazette*.



## COMMENTARY

*Scope of the section* :—This is the section conferring a rule-making power on the Provincial Government which has been referred to on several occasions while commenting on the preceding sections. It has been divided into three sub-sections, the first conferring a general power to do so in order to carry into effect the purposes of this Act, the second conferring a special one with reference to all or any of the specific purposes which have been enumerated and the third providing for the publication of such rules in the *Official Gazette*.

*Sub-section (1)* :—This sub-section is so worded as to make it possible for the Provincial Government to exercise the power conferred on it any number of times it thinks it necessary to do so, the only restriction imposed being that the rules which that Government may at any time make must be such as may be in accord with the intention of the Legislature as expressed in this Act, which is what is meant by the expression “for the purpose of carrying into effect the purposes of this Act.”

*Sub-section (2)* :—Particularly and without prejudice to the generality of the provision contained in sub-section (1) the Provincial Government is authorised by this sub-section to make rules with respect to the matters specifically mentioned in clauses (a) to (o) thereof. Such Rules as the said Government had considered it necessary to make with reference thereto till the end of 1941 were printed with comments as Appendix I in the first edition. In view of the inclusion of a “Scheduled Bank” in S. 47 (2) to (5) made by S. 20 of *Bom. Act VIII of 1945*, and of the deletion of the words and figure “sections 54” from S. 23 (4) by S. 9 of the said Act it seems that clauses (i) and (l) should have been suitably amended by the said Act but they have not. However that omission is not likely to come in the way of amending the relevant Rules and Forms because the general power to do so in order to carry out the purposes of this Act given by sub-section (1) is there.

One cardinal principle to be borne in mind with reference to the use to which prescribed forms can be put is that they cannot be made use of in interpreting the provisions of the Act.<sup>1</sup>

*Sub-section (3)* :—This sub-section requires that any rules which the said Government may make either under sub-section (1) or under sub-section (2) of this section, must be published in the *Official Gazette*, i.e. to say, the *Bombay Government Gazette*, “subject to the condition of previous publication”, which expression seems to mean that before being finally published in the said *Gazette*, they should have been published previously in any manner whatever, presumably with a view to invite objections and suggestions. The Rules and Forms printed in the first edition had been so published and were then finally published in the *Official Gazette* on 21st August 1941. Some of them were further amended from time to time as occasions for doing so arose on going through the same formality.

84\*. On the date on which ( a Board is established under section 4 for any local area or *for any class of debtors in any local area*, the provisions of section 3 to 8 of)<sup>1</sup> the *Bombay Small Holders Relief Act, 1938*, herein referred to as the said Act shall, notwithstanding anything contained in sub-section (3) of section 1 of the said Act, but save as provided in the provisions of section 11 of the said Act, (cease to have force in such area)<sup>2</sup> or in respect of such class of debtors in such local area, as the case may be<sup>3</sup>.

Repeal of Bom.  
Act VIII of 1938.

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1. *Sarveshvara Rao v. Umamaheshwar Rao* (A. I. R. 1941 Mad, 152, 153), a case under Mad. Act IV of 1938).

\*1. The words enclosed in brackets in the first part of this section except those printed in italics were added by S. 4 (a) of Bom. Act VI of 1941, and the italicised words within those brackets were added by S. 38 (i) of Bom. Act VIII of 1945.

2. The words in brackets in the second part of this section were added by S. 4 (b) of Bom. Act VI of 1941.

3. The italicised words, following the words in brackets referred to in note 2 were added by S. 38 (ii) of Bom. Act VIII of 1945.

Any right, privilege, obligation or liability or contract referred to in section 11 of the said Act shall revive and be enforceable as provided in the said section :

Provided that in regard to persons who are debtors and in respect of whose debts an application under section 17 of this Act can be made, such rights, privileges, obligations and liabilities or contract shall be enforceable in so far as the enforcement thereof is not inconsistent with the provisions of this Act.

85\* (1) On the date on which [a Board is established under section 4 for any local area *or for any class of debtors in any local area* (hereinafter referred to in this section as the aforesaid date)]<sup>1</sup> the *Dekkhan Agriculturists Relief Act, 1879* shall cease to have force (in such area)<sup>2</sup> *or in respect of such class of debtors in such local area, as the case may be*<sup>3</sup>.

Repeal of Act  
XVII of 1879.

(2) Nothing in sub-section (1) shall be deemed to affect, in regard to persons who are debtors and in respect of whose debts an application under section 17 can be made—

(a) the terms or incidents of any contract made or effected before (*the aforesaid date*)<sup>4</sup>;

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\*1. The words in large brackets in the first part of this sub-section except those italicised were substituted for the words *this Act comes into force* by S. 5 (a) of Bom. Act VI of 1941 and the italicised words within those brackets were added by S. 39 (i) of Bom. Act VIII of 1945.

2. The words in brackets in the second part of this sub-section were added by S. 5 (b) of Bom. Act VI of 1941.

3. The italicised words following those referred to in note 2 above were added by S. 39 (ii) of Bom. Act VIII of 1945.

4. The words in italics in this clause were substituted for the words *the date on which this Act comes into force* by S. 5 (b) (i) of Bom. Act VI of 1941.

(b) the validity, invalidity, effect or consequences of anything already done or suffered to be done before the aforesaid date ;

(c) any right, title, obligation or liability already acquired, accrued or incurred (before the aforesaid date)<sup>5</sup> ;

(d) any remedy or proceeding in respect of such right, title, obligation or liability, or

(e) anything done in the course of any proceeding pending in any Court on the aforesaid date ;

and any such remedy or proceeding may be enforced, instituted or continued, in so far as the enforcement, institution or continuance is not inconsistent with the provisions of this Act :

Provided that (nothing in this section shall)<sup>6</sup> in any way affect the transfer under section 37 of any suits or proceedings to which such debtor was a party.

#### COMMENTARY

*Scope of the section* :—This section as amended lays down the legal effect of the establishment of a D. A. Board for a local area or any class of debtors in such area under S. 4 of this Act. It is that in such areas and in respect of such class of debtors the *Deccan Agriculturists Relief Act, 1879*, ceases to have force from the date of the establishment of such Boards, subject to the reservations contained in sub-section (2).

*Sub-section (1)* :—This sub-section contains the general repealing clause of the nature above-mentioned. The result of such a repeal

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5. The words in italics in this clause were substituted for the words *such date* by S. 5 (b) (ii) of Bom. Act VI of 1941.

6. The words in italics in this proviso were substituted for the words *such repeal shall not* by S. 5 (b) (iii) of Bom. Act VI of 1941.

and of this section not being one of the 26 extended to the whole Province is that in the areas and for the class of debtors for which no Boards are established under S. 4 of this Act the said old Act will remain in force as regards (1) debtors under this Act for the adjustment of whose debts applications can be made under S. 17 of this Act; (2) debtors under this Act for the adjustment of whose debts no application can be made under the said section, and (3) non-debtors under the Act. It should however be borne in mind that 26 of the sections of this Act have been extended to the whole of this Province and that they have been put into operation there with effect from 29th March 1941. Under S. 1 (2) the remaining sections were extended to several selected areas and put into operation from time to time. The result thereof has been that both the old and the new Acts are simultaneously in operation in such areas.

*Sub-section (2):*—As regards debtors of the first of the three classes above-mentioned in the areas for which Boards will be established the repeal is made subject to certain restrictions which are specifically mentioned in clauses (a) to (e) of this sub-section. The effect of the reservation in clause (a) is that if any contract had been entered into by or with such a debtor before the date of establishment of a Board for the local area in which he ordinarily resides the terms and incidents thereof will be deemed to have remained intact. That of the one in clause (b) is that if anything has been done or suffered to be done before such date, the validity or invalidity thereof and the effects or consequences thereof will be deemed to have remained unaffected by the repeal of the Act so far as that area is concerned. That of the one in clause (c) is that if any right, title, obligation or liability had been acquired or had accrued or had been incurred before the said date it would remain untouched by such repeal. That of the one in clause (d) is that if any remedy had been availed of or any proceeding started under the old law such remedy or proceeding would remain unaffected by the change in the law for that area. Lastly, that of the one in clause (e) is that if anything had been done under the old law in the course of any proceeding pending in any court on the said date, that act will remain unaffected by the said repeal. The additional sentence commencing with

the words " and such remedy &c. " makes it clear what the Legislature meant by saying that the remedies and proceedings above-mentioned shall remain unaffected by the said repeal. It is that if any such remedy is capable of enforcement in a court of law it may be enforced, if any proceeding is capable of being started it may be started and if any is pending in any court it may be continued, so far as such enforcement, institution or continuance is not inconsistent with the other provisions of this Act.

*Proviso* :—Besides this reservation there is a proviso to the effect that the above exceptions shall operate only so far as they do not affect the transfer of certain suits and proceedings directed by S. 37 of the Act to be made. This means that if a pending suit or proceeding falls within the purview of S. 37 (1) it must be transferred to the competent Board and cannot be continued in the civil court where it is pending. Similarly if a notice with respect to any suit or proceeding is received from a Board under S. (37) (2) then too it should be transferred to the Board.

In case of any doubt as to the interpretation of this section the following rules for the interpretation of repealing Acts deduced from decided cases will be found useful :—

*Rules for the interpretation of repealing statutes* :—(1) The effect of repealing a statute is to obliterate it completely from the records of Parliament as if it had never been passed. And it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.<sup>1</sup>

(2) If there are saving clauses therein they must be given effect to<sup>2</sup> ; such clauses must express the intention to save any particular provisions in clear terms.<sup>3</sup>

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1. *Laxmanrao v. Balkrishna* (I. L. R. 36 Bom. 617, 621-22) and *Lemm v. Mitchell* (1912) A. C. 400, 406, both following the dictum of Tindal C. J. in *Key v. Goodwin* (1830) 6 Bing. 576; See also *Fatma Bibi v. Ganesh* (I. L. R. 31 Bom. 630) and *Ata-ur-Rahman v. Income-tax Commissioner, Lahore* (A. I. R. 1934 Lah. 1013 (2)).

2. *Digambar Paul v. Tufazuddi* (A. I. R. 1934 Cal. 80) following *Watson v. Winch* (1916) 1 K. B. 688.

(3) There is no rule of construction more firmly established than this that there is a legal presumption that the legislature would not disturb vested rights and that therefore any intention to do so must have been expressed in clear terms.

*Explanation* :—Rights of action and appeal being part of the substantive law are vested rights and are therefore governed by the same rule.<sup>4</sup>

(4) In the case of a conflict between the provisions of any two Acts, the later one is assumed to have repealed the earlier one.<sup>5</sup>

(5) A repeal of a special enactment by a subsequent general one must be in clear words and whether the words are clear or not must be determined in view of their natural meaning without being influenced by the previous state of the law.<sup>6</sup>

(6) Legislation restricting or affecting substantive rights must not be extended beyond its clear terms.<sup>7</sup>

(7) Exceptions to repealing enactments must also be in express terms.<sup>8</sup>

(8) The partial repeal of an Act must presumably be governed by the same rules as its total repeal.

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3. *Haripada Pal v. Tofajaddi* (I. L. R. 60 Cal. 1438); *Nepra v. Sayar Pramanik* (I. L. R. 55 Cal. 67); *Chaudhary Gursaran Das v. Parameshwari Charan* (A. I. R. 1927 Pat. 203).

4. *Ram Karan Singh v. Ram Das Singh* (I. L. R. 54 All. 299 F. B.); *Ibrahim v. Musamat Zainab* (A. I. R. 1935 Lah. 613); *Rama Krishna v. Subbarayya* (I. L. R. 38 Mad. 101); *Chengayya v. Kotayya* (A. I. R. 1933 Mad. 57); *Haider Hussain v. Puran Mal* (A. I. R. 1935 All. 706 F. B.); *Sivayya v. Pratipad Panchayat Board* (A. I. R. 1936 Mad. 18).

5. *Murad v. Lala Hans Raj* (A. I. R. 1937 Lah. 680).

6. *Govind Ram v. Kashi Nath* (A. I. R. 1936 All. 239).

7. *Zamindara Bank v. Suba* (A. I. R. 1924 Lah. 418); *Penniselvam v. Veeriah Vandayar* (A. I. R. 1931 Mad. 83).

8. *Haripada Pal v. Tofajaddi* (I. L. R. 60 Cal. 1438).

86\*. In respect of transactions entered into before the date on which a Board is established for any local area ( hereinafter referred to in this section as the aforesaid date )<sup>1</sup> by or with—

Transitory provisions.

(a) debtors in respect of whose debts no application can be made under section 17 of this Act, or

(b) persons who are not debtors, the *Dekkhan Agriculturists Relief Act, 1879*, XVII of 1879, shall, notwithstanding anything contained in section 85 of this Act, be deemed to remain in force ( in such area )<sup>2</sup>—

(a) for purposes of institution of suits...<sup>3</sup> for a period of three years from the aforesaid date,

(b) for purposes of any proceedings arising in or out of suits instituted before the expiry of the period of three years from the aforesaid date<sup>5</sup> until such proceedings are terminated.

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\*1. The words in italics here were substituted for the words *its repeal by* by S. 6 (a) of Bom. Act VI of 1941.

2. The words in italics here were added by S. 6 (b) of Bom. Act VI of 1941.

3. There is such a dotted line here in the text as printed in the *Official Gazette*.

4. The words in italics in this clause were substituted for the words *the date of coming into force of this Act* by S. 6 (c) of Bom. Act VI of 1941.

5. The words in italics in this clause were substituted for the words *the coming into force of this Act* by S. 6 (d) of Bom. Act VI of 1941.



## COMMENTARY

*Scope of the section* :—This section relates to the rights as regards transactions entered into, before the date of establishment of the Boards in any areas, with persons not affected by the provisions of the Act although they may be ordinarily residing in the areas for which D. A. Boards may be established or may be members of any class of debtors in any such areas for which such Boards may be established. It leaves them three years' period from the date on which such Boards may be established within which to file suits under the old law in respect of transactions entered into before the aforesaid date and leaves the operation of that law unaffected until the termination of the proceedings arising in or out of suits instituted within the said period.

*N. B.* The said period of three years has already elapsed in the case of those areas for which D. A. Boards were established between the beginning of January and the 20th day of April 1942. It is therefore quite clear that the provisions of the old Act of 1879 cannot be availed of for filing new suits under them according to the provisions of sub-clause (a) above, so far as those areas are concerned. Such proceedings arising in or out of such suits as may have been instituted before the date of expiry of three years from the respective dates of establishment of the Boards for those areas will however continue to be governed by the provisions of the said Act of 1879 till their termination by virtue of the provisions of sub-clause (b) above.

*SS. 85 and 86 considered together with reference to the previous law* :—So far as the debtors of the agricultural class in this province are concerned, the ordinary law of the land as contained in the *Indian Contract Act, 1872, Indian Limitation Act, 1908, Negotiable Instruments Act, 1881, Indian Evidence Act, 1872, Transfer of Property Act, 1882, Indian Registration Act, 1908, Civil Procedure Code, 1908 and certain other Acts* had long been modified in its application to transactions entered into with such debtors by the peculiar provi-

sions of the *Deccan Agriculturists Relief Act, 1879*, as amended from time to time upto 1928, which applied wholly to the four districts of Poona, Satara, Sholapur and Ahmednagar and some of the sections whereof containing a departure from the ordinary law of the land as contained in any of the enactments above-referred to, were made applicable to almost all the districts in this Province for over a generation. It has been explained at length in the section on *Reasons for passing it* in the INTRODUCTION why the Legislature of this Province thought it necessary to pass the present Act superseding the old one and in that on *Change in the previous law effected by this Act* therein in what respects this Act contains a departure from the law as embodied in the Act of 1879 as amended upto 1928. Since SS. 85 and 86 read with S. 1, which contain provisions as to where and how far the said change must be deemed to have taken place, have been amended by SS. 5 and 6 read with S. 2 of *Bombay Act VI of 1941*, it has become necessary to explain here precisely what is the combined effect of the provisions contained in the said two sections as amended.

(1) The first thing that is clear is that the said sections in terms prescribe what shall be the law governing the relations between debtors of a certain class ordinarily residing in specified areas and their creditors and that therefore the old law as contained in the *D. A. R. Act, 1879* will continue to govern the relations between the debtors of the agricultural class in the areas for which no D. A. Boards may be established under S. 4 of this Act, as in the case of the City of Bombay to which the said section is not and is not likely to be extended.

(2) As regards those areas for which Boards are established at any time, the population thereof is divided into two classes, namely :—(a) that of those who are debtors under this Act for the adjustment of whose debts applications under S. 17 lie and (b) that of those persons for the adjustment of whose debts no such applications lie, either because they are not debtors under this Act or because though debtors the total amounts of their debts on the relevant dates exceed the limit imposed by S. 26 of the Act.

(a) As regards person of the (a) class, the Act of 1879 will cease to be in force in any particular area for which or for a class of debtors residing in which a Board is established under S. 4 from the date of such establishment, subject however to the reservations mentioned in clauses (a) to (e) of sub-section (2) of S. 85, which have already been sufficiently explained and to which the provisions of S. 37 constitute an exception.

(b) As regards persons falling in class (b), the old Act is to be deemed to be in force, in their areas for the purpose of institution of suits in respect of transactions entered into before the date of establishment of a Board for their areas, for a period of three years from the date of such establishment and for the purposes of proceedings arising in and out of suits so instituted until they are terminated.



# APPENDIX I.

## BOMBAY ACT VI OF 1941.

Date of First Publication :—29th March 1941.

### *An Act to amend the Bombay Agricultural Debtors Relief Act 1939.*

WHEREAS it is expedient to amend the *Bombay Agricultural Debtors Relief*

(Preamble)

*Act, 1939*, for the purposes

Bom. XXVIII  
of 1939.

hereinafter appearing :

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of the *Government of India Act, 1935*, all the powers vested by or under the said Act in the Provincial Legislature:

26 Geo. 5, Ch. 2.

NOW, THEREFORE, in the exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. This Act may be called the *Bombay Agricultural Debtors Relief (Amendment) Act, 1941*.

Short title.

\*2. to 6. ... ..

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\* The amendments made pursuant to the provisions of SS. 2 to 6 have been incorporated and printed in italics in SS. 1, 22, 84, 85 and 86 respectively of Bom. Act XXVIII of 1939. (See pp. 14, 126-28, 310 to 319 of the Commentary on the said Act, and the particular sections concerned of this Act have been mentioned in the relative foot-notes. By virtue of SS. 5 (1) and 6 of the *Bombay General Clauses Act, 1904* (Bom. I of 1904) this Act came into operation on the date of its first publication in the *Official Gazette*.

## COMMENTARY

The circumstances in which this Act was passed by the Governor in the exercise of his powers under S. 93 of the *Government of India Act, 1935* and the changes in the law effected by the material sections, 2 to 6, thereof have been explained at length in Section I of the INTRODUCTION to Bombay Act XXVIII of 1939. The legal effect of the changes effected thereby have also been considered in the Commentary on the relevant sections of the principal Act except S. 84. If necessary reference for that purpose may be made to pp. 20-21, 128-29 and 312-19 of the Commentary on the said Act.

## APPENDIX II.

### BOMBAY ACT VIII OF 1945.

Date of First Publication :—21st April 1945.

#### *An Act to amend the Bombay Agricultural Debtors Relief Act, 1939.*

WHEREAS it is expedient to amend the *Bombay Agricultural Debtors Relief*

(Preamble)

*Act, 1939* for the purposes

Bom. XXVIII  
of 1939.

hereinafter appearing :

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation issued by him under section 93 of the *Government of India Act, 1935*, all powers vested by or 26 Geo. 5, Ch. 2. under the said Act in the Provincial Legislature :

• NOW, THEREFORE, in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. This Act may be called the *Bombay Agricultural Debtors Relief (Amendment) Act, 1945*.  
Short title.

\*2 to 39. ... ..

40. (1) The amendments made in the said Act by the provisions of this Act, other than sub-clauses (a), (c), and (d) of clause (ii) of section 2, clause (ii) of section 3, sections 8 and 10, clause (ii) of section 13, sections 14 and 16, and sub-section (1) of section 23, shall apply to all proceedings for adjustment of debts pending before a Board at the date of coming into operation of this Act.

(2) All proceedings in appeal pending before a Court at the date coming into force of this Act shall be disposed of as if this Act had not been passed.

41. All execution proceedings pending at any time including those pending at the date of the coming into force of this Act in the District Court or the Court of the First Class Subordinate Judge shall be transferred to the Collector under section 63 of the said Act.

Temporary provision.

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\* The amendments made pursuant to the provisions of SS. 2 to 39 have been incorporated in SS. 2, 3, 4, 9, 15, 16, 17, 23, 26, 30, 32, 35, 36, 37, 38, 41, 42, 46, 47, 50, 51, 52, 54, 55, 61, 63, 65, 66, 67, 67A, 68, 69, 73A, 77, 78, 83, 84 and 85 respectively of Bom. XXVIII of 1939 and the amendments made thereby have been printed in italics and the particular sections concerned of this Act have been mentioned in the relative foot-notes. By virtue of SS. 5 (1) and 6 of the *Bombay General Clauses Act, 1904* (Bom. I of 1904) this Act came into operation on the date of its first publication in the *Official Gazette*.

## COMMENTARY

*Section 1 to 39 :—*The first section of this Act has done nothing more than giving a short title to this amending Act which is necessary for convenient reference. The remaining 38 sections have made several amendments in the sections of the original Act mentioned in the foot-note under the previous page. The legal effects of those amendments have been duly considered in the Commentary on those sections. Reference to the pages thereof may be made as and when necessary. Section 40 and the succeeding section require separate comments on account of the nature of the provisions contained therein.

*Section 40 :—*This section, sub-divided into two sub-sections, provides for two distinct contingencies as will be explained below.

*Sub-section (1) :—*This sub-section prescribes that all the amendments made by the sections of this Act in those of the parent Act except those specifically mentioned therein shall apply to the proceedings for the adjustment of debts pending before a Board at the date of coming into force of this Act but makes an exception in the case of the application of S. 28 of this Act to alienations made before the said date. As the marginal note to the section shows this sub-section provides for giving retrospective effect to all the amendments made in the Act except those made by the said particular sections or sub-sections of sections. To this general provision the proviso to the sub-section makes an exception in the case of the alienations falling under S. 28 of this Act, made before the date of coming into force of this Act.

The principles governing amending enactments so far as they relate to the duty of giving retrospective effect to them have been discussed in the Commentary on S. 9 of Bom. Act XXVIII of 1939 under the heading *Statutes affecting vested rights* printed at pp. 89-91 of the said Commentary and in that on S. 37 of that Act under the heading *Rules as to giving retrospective effect to statutes* printed at pp. 172-76 of the said Commentary. It may be noted that the provision as to giving such effect to the amendments contained in all the material sections except those specifically mentioned being an express one

herein, no case of an implied provision to give such effect can be deemed to arise here.

The sections or portions of sections which have been excluded from the operation of this sub-section directing retrospective effect to be given are those which amend the following sections or portions thereof of the principal Act, namely :—S. 2 (6), (a) (iii) and (b) (iii) and *Explanation II*, clause (iv) in S. 3, S. 17 (1), SS. 26, 35, 36, 38 and 52 (1). In each of these, the original wording of the provision has been kept intact but a proviso has been added to each of them stating that in relation to a Board established after the coming into force of this Act *i.e.* Bom. Act VIII of 1945 this provision shall be construed to have certain words substituted for the original ones.

*Proviso to this sub-section* :—S. 65 of the parent Act as if originally stood rendered invalid any alienation of a property included in an award made by a debtor who was a party to such award unless it had been made with the previous permission of the Provincial Government. S. 28 of this amending Act now renders invalid an alienation of a property belonging to a debtor who is a party to any proceeding pending under the Act of 1939 besides that of a property belonging to a debtor against whom an award has been made. This leaves room for a doubt as to whether an alienation of any property of a debtor who was a party to a proceeding under the said Act made before the coming into force of this amending Act and before the property was included in an award made against him should be deemed to be invalid or not. This proviso sets that doubt at rest by providing that it shall not be deemed to be invalid.

*Sub-section (2)* :—This sub-section forms an exception as it were to S. 9 (1) of the principal Act. By virtue of this sub-section the First Class Subordinate Judge, now designated Civil Judge (Senior Division), who may have on hand appeals filed before the amendment, will have jurisdiction to dispose of such appeals and will be under an obligation to do so because this sub-section provides that such appeals shall be disposed of "as if this Act had not been passed." Under the amended sub-section (1) of S. 9 District Judges alone can entertain appeals filed



under the Act but he has the power to transfer any of the appeals filed in his court to any Assistant Judge or Civil Judge (Senior Division) who may have been empowered under S. 17 or 27, as the case may be, of the *Bombay Civil Court's Act, 1869* to hear appeals transferred to them by the District Judge.

*Section 41* :—This section contains a direction to the Courts of the Civil Judges (Senior Division) and the District Judges to transfer under S. 63 of the Act of 1939 all pending proceedings relating to the execution of awards including those which may be pending at the date of coming into force of the amending Act. This direction seems to be redundant because the intention of the Legislature seems, on reading S. 63 of the principal Act as amended and this section together with S. 40 (1) of this Act, to be to take away immediately the jurisdiction of the civil courts to execute awards and to vest it in the Collectors for all times and to give retrospective effect to the provisions of the amended section 63 and that intention had been carried out by amending S. 63 of the original Act by S. 27 of this Act and by not including the latter section amongst those in S. 40 (1) of this Act which were specifically excluded from the general provision in that section as to giving retrospective effect. It does not also seem to have been happily-worded because the only pending proceedings could be those pending at the date of coming into force of the amending Act. If at all it was considered necessary to make any temporary provision for the transfer of pending proceedings it should have been made without inserting the words "pending at any time including those" between the word "proceedings" and the word "pending" where it occurs for the second time in this section.

### APPENDIX III.

#### BOMBAY ACT II OF 1946.

Date of First Publication :—14th February 1946.

*An Act to amend the Bombay Agricultural Debtors  
Relief Act, 1939.*

WHEREAS it is expedient to amend the *Bombay Agricultural Debtors Relief Act, 1939* for the purposes hereinafter appearing :

Bom. XXVIII  
of 1939.

AND WHEREAS the Governor of Bombay has assumed to himself under the Proclamation dated the 4th November 1939 issued by him under section 93 of *Government of India Act, 1935*, 26 Geo. 5, Ch. 2. all powers vested by or under the said Act in the Provincial Legislature :

NOW, THEREFORE in exercise of the said powers, the Governor of Bombay is pleased to make the following Act :—

1. This Act may be called the *Bombay Agricultural Debtors Relief (Amendment) Act, 1946*.

Short title

\*2 and 3 ... ..

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\*S. 2 inserts certain words in sub-section (1) of section 54 of Bom. Act XXVIII of 1939. Those words have been incorporated in the said sub-section as printed at p. 237 of the Commentary on that section and have been printed in italics.

S. 3 substitutes new sub-sections (1) and (2) of section 55 of the said Act for those substituted by S. 25 (1) of Bom. Act VIII of 1945 therein. The whole of the two sub-sections as so substituted have been incorporated in the section as printed at pp. 244-46 of the Commentary on the Act of 1939 and have throughout been printed in 12 point italics. The said sub-sections as they stood after the amendment made in 1945 have moreover been printed at pp. 247-48 in 8 point italics as a part of the Commentary on that section and the same as they had stood prior to that amendment have been printed in the same italics in the foot-note under p. 248 of the said Commentary.

## APPENDIX IV.

### ORDINANCE XI OF 1945.

*Date of Publication in the Government of India Gazette :—  
5th May 1945.*

*Date of Re-publication in the Bombay Government Gazette :—  
16th May 1945.*

*An Ordinance temporarily to validate certain Provincial laws in so far as they relate to promissory notes.*

WHEREAS an emergency has arisen which makes it necessary temporarily to validate the provisions of certain Provincial debt enactments in so far as they relate to promissory notes.

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the *Government of India Act, 1935* (26 Geo. 5, C. 2), the Governor General is pleased to make and promulgate the following Ordinance :—

*1. Short title, Commencement and Duration :—*(1) This Ordinance may be called the *Provincial Debt Laws (Temporary Validation) Ordinance, 1945.*

(2). It shall come into force at once, and shall remain in force upto the 31st day of March 1947.

*2. Temporary validation of Provincial debt laws in certain respects. —*While this Ordinance remains in force—  
(a) the provisions of the Acts set out in the First Schedule and of the amendments enacted after the 1st day of April 1937 and before the 12th day of December 1944 to the

Acts set out in the Second Schedule shall, in so far as they relate to or affect promissory notes, transactions based on promissory notes or proceedings arising out of such transactions, be deemed to be and always to have been as valid and effectual for all purposes as if they had been, in relation to such matters as aforesaid, enacted by the Central Legislature ; and

(b) no decree, declaration or order of any court or debt settlement tribunal (by whatsoever name called) made, whether before the commencement or during the the continuance of this Ordinance, shall be called in question or subjected to modification on the ground that such of the said provisions as are relevant are invalid and ineffectual by reason of the incompetence of the Provincial Legislature concerned to make laws relating to the aforesaid matters.

#### THE FIRST SCHEDULE

- (1) The Madras Agriculturists Relief Act, 1938 ( Madras IV of 1938).
- (2) The Punjab Registration of Money-lenders Act, 1938 (Punjab Act III of 1938).
- (3) The Bihar Money-lenders (Regulation of Transactions) Act, 1939 (Bihar Act VII of 1939).
- (4) The Orissa Money-lenders Act, 1939 (Orissa Act III of 1939).
- (5) The Central Provinces and Berar Relief of Indebtedness Act, 1939 (Central Provinces and Berar Act XIV of 1939).
- (6) The Bombay Agricultural Debtors Relief Act, 1939 (Bombay Act XXVIII of 1939).

- (7) The Sind Agriculturists Relief Act, 1940 (Sind Act VIII of 1940).
- (8) The Bengal Money-lenders Act, 1940 (Bengal Act X of 1940).
- (9) The United Provinces Debt Redemption Act, 1940 (United Provinces Act XIII of 1940).
- (10) The Sind Debt Conciliation Act, 1941 (Sind Act IX of 1941).
- (11) The Sind Money-lenders Act, 1944 (Sind Act XIV of 1944).
- (12) All Acts enacted before the 12th day of December 1944 amending any of the above Acts.

## THE SECOND SCHEDULE

- (1) The Central Provinces Debt Conciliation Act, 1933 (Central Provinces Act II of 1933).
- (2) The Punjab Relief of Indebtedness Act, 1934 (Punjab Act VII of 1934).
- (3) The Assam Money-lenders Act, 1934 (Assam Act IV of 1934).
- (4) The Central Provinces Money-lenders Act, 1934 (Central Provinces Act XIII of 1934).
- (5) The Bengal Agricultural Debtors Act, 1935 (Bengal Act VII of 1935).
- (6) The Central Provinces Reduction of Interest Act, 1936 (Central Provinces Act XXXII of 1936).

## COMMENTARY

*Scope of section 1.* —This section gives the Ordinance a short title and prescribes its duration.

*Sub-section (1) :—What is an Ordinance?* —The term “Ordinance” though used in numerous enactments made in England

including the *Government of India Act, 1935* has not been defined anywhere statutorily or judicially, not even in the *Interpretation Act, 1889*.<sup>1</sup> It is also being used from time to time even in India and yet it has not been so defined in any Indian enactment including the *General Clauses Act, 1897*. On the authority of Tomlin's *Law Dictionary*<sup>2</sup> P. Ramanatha Aiyar defines it as "a law, decree or statute" and adds that in modern times it is used to signify "a rule or body of rules enacted by an authority less than a sovereign" and that although it was being used rather loosely with reference to some Acts of Parliament, those technically so-called differ from it in this respect that whereas "Ordinances" were temporary Acts founded on previous Acts and could, as such be altered by subsequent Ordinances by the same authority "Acts of Parliament" could not be altered except by the King, Lords and Commons. According to Wharton's *Law Lexicon* it is a "law, rule or prescript" but there is a conflict of views amongst learned writers as to the precise distinction between an "Ordinance" and an "Act of Parliament". According to Halsbury's *Laws of England*, laws made by a Governor with the advice and consent of the Legislative Council or of the Court in the colonies where there are no representative assemblies, are called "Ordinances."

*What is an Emergency?* —The term "Emergency" has been defined by the Calcutta High Court in its judgment in the case of *Benoari Lal v. Emperor*<sup>3</sup> to be "something in existence which calls for immediate action". In Aiyer's *Law Lexicon* it has been defined as "any event or occasional combination of circumstances which call for immediate action or remedy; a pressing necessity; an exigency; a sudden and unexpected happening; an unforeseen occurrence or condition." In Wharton's *Law Lexicon* the expression "Emergency Legislation" has been defined as "the body of Statutes, Proclamations, Orders in Council, Rules, Regulations and Notifications

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1. Rolland and Burrows, *Words and Phrases Judicially Defined* (Butterworth and Co. London, 1944).

2. Madras, 1940.

3. A. I. R. 1943 Cal. 285, 318.

passed or made in consequence of the European crisis of August 1914 and the ensuing state of war."

*Court's power under Emergency Legislation* :—It is not for the Courts to determine whether the "something which calls for immediate action" existed or not when a particular ordinance was promulgated and whether the authority empowered by statute to promulgate ordinances had or had not exercised his discretion rightly. They have to assume that such emergency as the statute contemplated did in fact exist when the power was exercised."<sup>4</sup>

*Provincial debt-enactments* :—Both the full title of the Ordinance and the preamble thereto make reference to "Provincial laws or enactments" and the preamble specifically refers to "Provincial debt-enactments" as the class of Provincial laws or enactments to temporarily validate which the Ordinance was required to be promulgated. These laws are mentioned in Schedules I and II thereto and those Schedules have been incorporated in it by S. 2 thereof. Thereout those mentioned in the First had all been passed after 1st April 1937, from which date Part III of the *Government of India Act, 1935* relating to Provincial autonomy came into operation and those mentioned in the Second had been passed before that date but had been amended between that date and the 12th day of December 1944. A reference to Sections II and III of the *Introduction to Bom. Act XXVIII of 1939* will make it clear why those Acts were required to be passed. Some of those Acts are purely remedial measures, others purely preventive and still others of a mixed character. The object of the measures of the first class is to give relief from indebtedness to certain classes of debtors, that of the second to regulate and keep control over the business of money-lending which is the root-cause of that indebtedness and those of the last is to do both. As specimens of the last may be cited S. 12 of the *Bihar Money-lenders Act, 1938*, S. 8 of the *Bihar Money-lenders (Regulation of Transac-*

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<sup>4</sup>. *Emperor v. Benoari Lal* (A. I. R. 1945 P. C. 48); *Basant Chandra v. Emperor* (A. I. R. 1945 Pat. 44, 50, 56); *Shreekant Pandurang v. Emperor* (A. I. R. 1943 Bom. 169, 173-74); *P. K. Tare v. Emperor* (A. I. R. 1943 Nag. 26, 29); *Teja Singh v. Emperor* (A. I. R. 1945 Lah. 154, 157).

tions) Act, 1939, SS. 30-33 and 36 of the *Bengal Money-lenders Act 1940*, SS. 8-17 of the *Orissa Money-lenders Act, 1939*, SS. 27-37 of the *Sind Money-lenders Act, 1944* and SS. 8-9 of the *Assam Money-lenders Act, 1934* as amended in 1943. Such provisions are in contravention of the provisions contained in certain sections of several statutes of the Indian Legislature passed 60 to 70 years ago such as the *Indian Contract Act, 1872*, *Indian Evidence Act, 1872*, *Negotiable Instruments Act, 1881*, *Transfer of Property Act, 1882* &c. They however authorise the courts or the special tribunals empowered to administer them to give effect to them inspite of such contravention. The Acts in which they are contained having been passed by the Provincial Legislatures, a question is sometimes raised whether they were *intra vires* or *ultra vires*. It is therefore necessary to consider what is the source and what the extent of the authority to pass laws conferred on such subordinate legislatures.

*Source and extent of authority of the Provincial Legislatures:—*

S. 100 of the *Government of India Act, 1935* confers upon the Provincial Legislatures exclusively the power to legislate on the subjects mentioned in List II in Schedule VII to the Act. Besides that it also confers concurrent jurisdiction to legislate on the subjects mentioned in List III in the same schedule on both the said Legislatures and the Federal or Central Legislature. Elaborate though both these lists are, it is not always easy to fix up any matter as definitely falling in any particular list. The recommendations of the Royal Commission on Agriculture and the Indian Central Banking Inquiry Committee on which the Provincial debt-enactments are based were of such a character that it was not always possible to confine the provisions therein strictly to those lists and not to encroach upon the exclusive powers of the Central Legislature or not to affect the provisions of any Acts of that Legislature passed before 1st April 1937. In order to provide for such cases S. 107 (2) of the *Constitution Act* enacts that if any Provincial enactment is of the above character and the subject thereof is one falling in the Concurrent List it can be saved from being attacked as *ultra vires* the Provincial Legislature concerned by reserving it for and obtaining the assent of either the Governor General



or His Majesty and that it would remain in force until the Federal Legislature chooses to amend it according to the procedure laid down in the proviso to S. 107.

The defect in a Provincial enactment becomes difficult to be cured, however, when the offending enactment relates to a subject falling in the exclusive Federal List I.

*Consequence of incurable defects in Provincial laws :—*In the eleven cases of the *Bank of Commerce Ltd., Khulna v. Kunja Bihari Kar and Others*,<sup>5</sup> which had gone up in appeal to the Federal Court from the decision of the Calcutta High Court under SS. 30, 36 and 38 of the *Bengal Money-lenders Act, 1940*, the Appellate Court found that the provisions of the said sections contravened those of SS. 32, 79 and 80 of the *Negotiable Instruments Act, 1881*, that they related to a subject mentioned in Entry No. 28 in List I, that the assent of the Governor-General could not cure such a defect and that therefore the provisions of the said sections of the Bengal Act were *ultra vires*. Three of the persons, named Prafulla Kumar Mukharjee, Kedar Nath Basu and Abdulla Hakim, arrayed against the Bank, appealed to the Privy Council against that decision and the Judicial Committee thereof held<sup>6</sup> that the subject of the enactments concerned was *money-lending* which was a Provincial subject, and that they were not therefore *ultra vires* the Legislature of Bengal, even though contravening the provisions of SS. 32, 79 and 80 of the *Negotiable Instruments Act, 1881*. This decision also nullifies the effect of a similar decision of the Federal Court in the case from Madras of *Yajnanarayan v. Subbarayudu*.<sup>7</sup>

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5. (1944) F. L. J. 269=1944 F. C. R. 370=A I. R. 1945 F. C. 2.

6. Associated Press of India message dated New Delhi, March 3, 1947 announcing the delivery of the judgment of the Privy Council on the 11th January 1947 and the forwarding of a copy thereof to the Government of India, published in the 'Bombay Chronicle' dated the 4th March 1947.

7. 1945 F. L. J. 105.

As the law had remained unsettled during the intervening period and there were similar provisions in the similar Acts passed by other Provincial Legislatures such as those of SS. 38 to 42 of the *Bombay Agricultural Debtors Relief Act, 1939* and SS. 7 to 9 and 13 of the *Madras Agriculturists Relief Act, 1938*, the Governor-General treating it as a case of emergency, had promulgated this Ordinance. *Prima facie* it must be deemed to have a historical value only as the 31st March 1947 has already passed away. It has however been printed and commented upon here under the belief that a reference to it may be necessary in any of the appeal cases which may be pending.

In the above decisions of the Federal Court, it was not the whole Act concerned that was held to be *ultra vires* but only the particular sections thereof which contained the defect. This was done on applying the *Doctrine of Severability*. The said doctrine has been considered at length in several other cases also, namely those of *Emperor v. Bhola Prasad*,<sup>8</sup> *Kunwar Singh v. The Provincial Government of C. P. and Berar*,<sup>9</sup> and *Bank of Commerce Ltd., Khulna v. Amulya Krishna*.<sup>10</sup>

The above question arises only when it is determined that particular provisions in an Act are *ultra vires*. Before it is determined a distinction has to be drawn between a case of a mere irregularity and one of nullity and it is only if a case falls under the latter that the *Doctrines of Severability* has to be applied if possible. On the question of the said distinction and the *Doctrine of Waiver* which is helpful in coming to a conclusion as to whether a particular case is that of an irregularity or a nullity see the judgment in *Gour Chand v. Pradyumna Kumar*.<sup>11</sup> Further, whether a provision can or cannot be waived by a party, depends upon whether it is of a *mandatory* or a *directory* nature and as ruled in *Dhian Singh v. The Secretary of State*<sup>12</sup> a decision on that point depends upon the further question whether the particular provision is based on grounds of *public policy*

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8. A. I. R. 1942 Pat. 351, 355.

9. A. I. R. 1944 Nag. 201, 219.

10. A. I. R. 1944 F. C. 18, 21-22.

11. A. I. R. 1945 Cal. 6, 16.

12. A. I. R. 1945 Nag. 97, 99.

or is made for the benefit of a particular class or person. For determining this it may be necessary to consider the scope and object of the Act concerned as a whole as was held in *Dharendra Krishna v. Nihar Ganguly*.<sup>13</sup> The intention of the legislature must again be taken into consideration in each case and no presumption as to the directoriness of a provision can be drawn merely from the fact that it relates to a mere matter of procedure as ruled in *Mono Mohini v. Nityanand*.<sup>14</sup>

Before considering this again it is necessary to determine whether a case of conflict is a case of a mere *diversity* or of a real *repugnancy*. It is only when two diverse elements seek to occupy the same field that a case of repugnancy, which means inconsistency or contrariety with respect to quality, matter or prescribed form, can according to the ruling in *Foster's case*<sup>15</sup> be deemed to have arisen as held in the case of *Bikram Kishore v. Tafazzal Hossain*.<sup>16</sup>

*S. 72 in the Ninth Schedule to the G. of I. Act, 1935* :—The said schedule contains the “Provisions of the *Government of India Act (1919)* continued in force with amendments” until the establishment of a Federation in accordance with the provisions of S. 317 contained in Part XIII of the Act, containing the “Transitional Provisions”.

*S. 317 in Part XIII of the Act* :—The transitional provisions contained in S. 317 in Part XIII of the *Constitution Act* relate to the continuance with certain amendments, of certain provisions of the *Government of India Act, (1919)* necessary for the interim Government of India pending the establishment of a Federal Government notwithstanding the repeal of that Act with the proviso that nothing in the said provisions shall affect the provisions of the last but one preceding section and a specific provision in addition thereto to the effect that the act done by the Secretary of State in Council under the old Act before the coming into force of Part III of the new Act shall not be considered invalid in spite of the non-continuance of his Council by the amended provisions contained in the Ninth Schedule to the new Act.

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13. A. I. R. 1943 Cal. 266, 277-78.

14. A. I. R. 1943 Cal. 609, 610.

15. 11, Coke Rep. 5613.

16. A. I. R. 1942 Cal. 587.

*The Ninth Schedule to the Constitution Act*:—The Ninth Schedule to the new Act comprises several amended sections of the old Act mentioned by their original numbers although they are not consecutive ones. Thus for instance, *section 72* of the old Act as amended occurs *between sections 69 and 85*.

*5. 72 of the old Act as occurring in the said Schedule*:—This is a section empowering the Governor-General “to make and promulgate Ordinances for the peace and good government of British India or any part thereof”, “in cases at emergency” which will have “the like force of law as an Act passed by the Indian Legislature,” “for the space of not more than six months from their promulgation,” be “subject to the like restrictions” and “like disallowance” as the power of the Indian Legislature to make laws and “be controlled or superseded by any such Act.”

*Powers of the Indian Legislature to make laws*:—The powers of the Indian Legislature to make laws have been defined in Chapters I and II of Part V of the *Constitution Act* comprising SS. 99 to 110 of the Act which are to be read with Lists I, II, and III in Schedule VII to the Act. These powers are subject to that of His Majesty to disallow any Act, though passed, by an Order in Council issued within twelve months of its promulgation.

*Sub-section (2). —Duration of an Ordinance and the amendment of S. 72 in that respect*:—According to the said S. 72 of the old Act as so continued to be in operation an Ordinance would remain in force for “a space of not more than six months.” However by sub-section (3) of section 1 of the *India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, ch 33)* passed on 27th June 1940, the said words occurring in the said S. 72 of the old Act have been omitted and certain other alterations in the wording of the said section have been made by other sections of the said Act. The relevant ones from amongst the alterations are :—(1) that an Ordinance made under the said section 72 becomes applicable even to those who are exempted from the operation of certain Indian laws by S. 111 of the new Act; (2) by virtue of S. 3 of the said Act of Parliament read with SS. 1 and 2

such emergency ordinances remain in force for "the period beginning from the date of passing of this Act and ending with such date as His Majesty may, by Order in Council, declare to be the end of the emergency which was the occasion of the passing of this Act." The power of promulgating ordinances is under S. 4 (1) ordinarily exercisable by the Governor-General only on the direction of the Secretary of State but in cases in which the delay caused by calling for it is likely to be detrimental to the public interest he may act upon it without such a direction.

*Scope of section 2.*—This is the only substantial section in this ordinance. By its two clauses (a) and (b) it *directs* that the provisions of the Acts mentioned in the First Schedule thereto and of the amendments, if any, made before 12th December 1944 so far as they relate to or affect promissory notes or proceedings arising out of such transactions shall be deemed always to have been valid and effectual for all purposes as if they had been enacted by the Central Legislature and *provides* that no decree, order or award made before the date or during the continuance of this ordinance shall be called in question or subjected to any modification on the ground of incompetence of the Legislature concerned.

*First Schedule.*—The Acts mentioned in clauses (1) to (11) of this Schedule are Acts passed by the Provincial Legislatures of Madras, Punjab, Bihar, Orissa, Central Provinces and Berar, Bombay, Sind, Bengal and United Provinces after 1st April 1937 when Part III of the *Constitution Act* came into force.

The Central Legislature could have passed all those Acts and made the amendments therein referred to in clause (12) by virtue of the power conferred by sub-section (1) of S. 100 of the Act of 1935 and owing to the subject dealt with therein having been included by Entry No. 28 in List I forming part of Schedule VII to the Act. The Proclamation of Emergency required by S. 102 to be issued had been issued by the Governor-General and published in the *Gazette of India, Extraordinary* dated 3rd September 1939.<sup>17</sup>

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17. See *Legislation and Orders Relating to War*, Vol. II, (Second edition, 1941) p. 165.

The amending Acts referred to in clause (12) are :—

- (1). The Madras Agriculturists Relief (Amendment) Act, (XV of) 1943.
- (2 to 6). The Central Provinces and Berar Relief of Indebtedness (Amendment) Acts, (II of) 1940, (VI of) 1940, (V of) 1941, (XI of) 1942, (II of) 1943.
- (7). The Bombay Agricultural Debtors Relief (Amendment) Act, (VI of) 1941.
- (8). The Sind Agriculturist Relief (Amendment) Act, (VIII of) 1940.
- (9 and 10). The United Provinces Debt Redemption (Amendment) Acts, (VI of) 1941 and (VI of) 1942.

These amendments relate to the Acts mentioned in clauses (1), (5), (6), (7) and (9). The Acts mentioned in the other clauses had not been amended before 12th December 1944.

*Second Schedule.*—All the Six Acts mentioned in this Schedule are Acts passed before 1st April 1937. The Provincial Legislatures which passed them were those of the Central Provinces, Punjab, Assam and Bengal.

The amending Acts referred to in clause (a) are :—

- (1 to 10). The Central Provinces Debt Conciliation (Amendment) Acts, (I of) 1934, (XIV of) 1935, (XXVIII of) 1935, (XV of) 1936, (XXXIII of) 1936, (XVII of) 1937, (XIX of) 1939, (XX of) 1939, (XXI of) 1939, and (XXII of) 1939.
- (11 and 12). The Punjab Relief of Indebtedness (Amendment) Acts, (XII of) 1940 and (VI of) 1942.
- (13). The Assam Money-lenders (Amendment) Act, (VI of) 1943.
- (14 to 21). The Central Provinces Money-lenders (Amendment) Acts (XIII of) 1936, (XIX of) 1937, (XXIV of) 1937, (XVI

of ) 1939, ( XVIII of ) 1939, ( XXIII of ) 1939, ( XXVII of ) 1939 and ( XIV of ) 1940.

(22 and 23). The Bengal Agricultural Debtors (Amendment) Acts, ( VIII of ) 1940 and ( II of ) 1942.

(24). The Central Provinces and Berar Reduction of Interest (Amendment) Act, ( X of ) 1938.

As can be seen from the titles themselves the Act mentioned in the first clause was amended no less than 10 times, that mentioned in the fourth 8 times, those mentioned in the second and the fifth, twice and the remaining two, once each.

*Provincial debt-enactments not covered by this Ordinance :—*

The above 11 Acts passed after 1st April 1937 and those amending them and the 6 Acts passed before the said date and those amending them do not exhaust the list of Provincial debt-enactments passed between 1933 and 1945. Those not covered by this Ordinance thereout are :—

- (1) The Bihar Money-lenders Act ( III of ) 1938. This was only partially repealed by Bihar Act VII of 1939, No. 3 in Schedule I.
- (2) The Bengal Rates of Interest Act, ( III of ) 1939.
- (3) The Madras Pawn-brokers Act, ( XXIII of ) 1939.
- (4) The Madras Debt Conciliation Act ( XI of ) 1936.
- ( 5 to 7 ) The Madras Debt Conciliation (Amendment) Acts, ( XVII of ) 1942, ( IX of ) 1943 and ( XXXI of ) 1943.
- (8) The United Provinces Agriculturists Relief Act, 1934.
- (9 and 10) The United Provinces Agriculturists Relief (Amendment) Acts, ( III of 1935 ) and ( IX of ) 1937.
- (11) The Usurious Loans ( United Provinces Amendment ) Act, ( XXIII of ) 1934.
- (12) The United Provinces Regulation of Agricultural Credit Act, ( XIV of ) 1940.

- (13)        The Punjab Debtors Protection Act, ( II of ) 1936.
- (14 and 15) The Punjab Debtors Protection ( Amendment ) Acts, ( IX of ) 1938 and ( X of ) 1939.
- (16)        The Usurious Loans ( Central Provinces Amendment ) Act, ( XI of ) 1934.
- (17)        The Provincial Insolvency (Central Provinces Amendment ) Act, ( II of ) 1936.
- (18)        The Central Provinces Protection of Debtors Act, ( IV of ) 1937.

## APPENDIX V.

### BILL No. XIII OF 1939\*.

The attention of the reader has already been drawn at several places in the Commentary on the Act of 1939 to the fact that *Bill No. XIII of 1939* had undergone several modifications before it became *Bom. Act. XXVIII of 1939*. It would however be useful to know that the Bill as published at pp. 117-52 of Pt. V of the *Bombay Government Gazette* dated 20th February 1939 contained the same five chapters comprising 82, instead of 86, sections, divided as follows :— Chapter I.—Clauses 1-3; Chapter II.—Clauses 4-16; Chapter III.—Clauses 17-61; Chapter IV.—Clauses 62-72 and Chapter V.—Clauses 73-82.

The full and short titles, the preamble, and the headings of the chapters and the clauses, had remained completely unmodified. A Comparative Table of the numbers of the unmodified clauses and the corresponding sections, the clauses which were entirely deleted, the

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\*For the legitimate use which can be made of the history of any piece of legislation prior to its enactment see the Commentary under the sub-heading *Previous history of the law* under the main heading *Reference to Subject* in the Commentary on S. 2 at pp 35-36.



sections which had no clauses in the Bill corresponding to them and the clauses which were enacted on partially modifying them had been given at p. 327 of the First Edition of the Act.

NOTE the following references, namely :—

1. Notes on Clauses at pp. 154-60 of Pt. V of the *Gazette* dated 20-4-39 ;
2. Speech of the Hon'ble the Finance Minister who moved the first reading of the Bill at pp. 2418 *et seq.* of Pt. II of Vol. V of the *Bombay Legislative Assembly Debates, 1939* ;
3. Report of the Select Committee and the amendments proposed by it at pp. 335-41 of Pt. V of the *Gazette* dated 25th July 1939.
4. Bill as re-drafted in view of the Report at pp. 342-89 of the same Part of the *Gazette* of the same date.
5. Rules made by the Provincial Government under S. 83 of the Act together with the forms prescribed thereby, as reprinted at pp. 261-325 of the First Edition of the Act from pp. 685-727 of Pt. IVB of the *Gazette* dated 21st August 1941. Amendment therein were subsequently made by R. D. No. 3791/33 dated 1st July, 7th August, 7th October, and 24th December 1942, 1st July 1943 and 25th April 1945.



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Age Group	U.S. should take action (%)	U.S. should not take action (%)
18-29	85	15
30-49	82	18
50-69	88	12
70+	92	8

# THE BOMBAY AGRICULTURAL DEBTORS RELIEF LEGISLATION, 1939-47

## INDEX OF SUBJECTS

*N. B.* The figures in this Index indicate the numbers of the pages to which reference is to be made for the subjects after which they occur. Those of the *Introduction* are distinguished by the abbreviation *Int.* placed before them. Those in the Roman figures relate to the pages in Part I of this volume and those in the Arabic to those in Part II thereof. References have been given as a rule to sections only in the case of legislative provisions and to the Commentary when the subject under reference is dealt with therein although there may be no such clear provision with regard thereto.

*Abbreviations*:—B. P. B. I. C.=Bombay Provincial Banking Inquiry Committee; Bom. Pro. Co-op. L. M. Bank=Bombay Provincial Co-operative Land Mortgage Bank; C. B. I. C.=Central Banking Inquiry Committee; P. G.=Provincial Government; Pri. L. M. Bank=Primary Land Mortgage Bank; Pt.=Part; R. C. A.=Royal Commission on Agriculture; U. H. F.=Undivided Hindu Family.

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# CORRIGENDA AND FURTHER ADDENDA

## CORRIGENDA

Part I.—for Com. page no. CLIV read CXLIV.

“ “ “ CIXL “ CXLIX.

“ “ “ CXL “ CL.

at “ “ XXII, line 2, cl. 9) for Bom. VIII read Bom. XXVIII.

“ “ “ XXXII, “ 11 from the bottom for rejected read returned and in  
“ “ “ 12 “ “ “ for returned “ rejected.

“ “ CLXVII, heading of condition (*etc.*)... for authorised “ authorised.

Part II.—Int. p. 6, last line, Section II World—War II.<sup>2</sup>

“ 16, 1st sentence, last para awarded “ award.

“ 63, last line Officers “ Officer.

Com. “ 1, f. n. line 5 from the bottom v. Khulna “ Khulna v.

“ 39, “ 2 ... Venkateshwar “ Venkateshwar.

“ “ 41 ... “ Hucumchand “ Hucumchand.

“ 42, line 6 from the bottom Ramanauja “ Ramanauja.

“ 79, f. n. 4 line 2 ... Shes Dayal “ Shes Dayal.

“ 103, f. n. 1 ... Shea Narain “ Shea Narain.

“ “ “ ... 796 “ 796.

p. 162,	Pro. line 4 ...	for	Where.
„ 165,	...f. n. ...	„	„ proviso.
„ 173,	„ 3 last line	„	„ <i>Sadam</i> .
„ 179,	marginal note ...	„	„ accounts.
„ 203,	lines 3 and 4 from the bottom	„	„ appears.
„ 228,	2nd para	„	„ <i>Paragraph (4)</i> „ <i>(4) Paragraph (5)</i> .
„ 231,	last but one line	„	„ the section „ section 51.
„ 238,	4th line ...	„	„ charged.
„ 246,	3rd „ ...	„	„ 2.
„ 303,	5th line of S. 78	„	„ proceedings.
„ 359,	subject LAW,	line 6 „	„ retrospective.
„ 362,	„ OFFENCE	„ 1 „	„ filed.
„ 364,	„ PLEADER	„ 4 „	„ as of right.
„ 367,	„ REDUNDANCY	„ 2 „	„ how far.
„ 368,	„ REPEALED ACT	„ 3 „	„ reference.
„ 370,	„ SALE	„ 4 „	„ <i>Int. XVIII</i> ;
„ 372,	„ STATEMENT	„ 2 „	„ to be held.
„ 118,	para 2 line 2, bet. the word “his” and “S. 2 (4) (a)”	„ 15 „	„ prepared.
			„ insert “section as read with”

insert (1).

p. 167, ... bet. the word figure 37 and "All"  
bet. the word "For" for "a statutory exception"  
,, 236, in the N. B. after the word "For" for "a statutory exception"  
read "statutory exceptions" and at the end after the figure  
"56" add "and S. 57."

#### FURTHER ADDENDA

Part I. At. Int. at p. XV. add the following foot-note:—

The *Bombay Money-lenders Rules, 1947* were FINALLY published under R. D. Notification No. 4312/45 dated 25th October 1947 issued under S. 39 of the *Bombay Money-lenders Act, 1946* at pp. 726 A to L of Part IV B of the *Bombay Government Gazette, Extraordinary* dated 29th October 1947.

The Act itself (*Bcm. XXXI of 1947*) was put into force in the whole of the Province with effect on and from 17th November 1947 by R. D. Notification No. 2770/45 issued under sub-section (3) of section 1 of the said Act on 3rd November 1947 and published at p. 728 of the same Part of the same Gazette bearing the same date.

At Com. p. XXXII after the para ending with the words "explained in the Commentary thereon" add the following:—

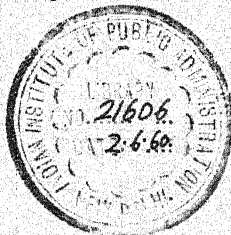
*Kennedy of the party whose application is rejected:—*The party whose application is rejected on the ground it was time-barred, has no right to appeal against the order of rejection because an order of that nature is not one of those mentioned in S. 43 (1). He has also no right to file a regular suit although the old S. 73 has not been re-enacted because the application having been held time barred, the debt must be deemed to have been extinguished under S. 15 so long as the order is not reversed. He can

however file a revision petition in the High Court because the order being an order of a court subordinate to the High Court, S. 115 of the C. P. Code is applicable.

At Com. p. CXLVII at the end of the Commentary on sub-section (1) of S. 56 add the following para:—

*Effect of repeal after three years:—*The effect of the repeal of the D. A. R. Act “on the expiry of three years from the date of coming into operation of this Act” is that in the areas for which D. A. Boards were established in 1945 and 1947 the said Act will remain in operation till 26th May 1950. It will not however have the effect of putting it again into operation so as to give a new right of action in those areas for which such Boards were established between January and April 1942 because there it had already lapsed before 27th May 1947 except for actions pending on that date and because this is a repealing not a reviving section and according to S. 7 (a) of the Bom. General Clauses Act, 1904 such a section cannot have that effect unless a different intention is expressed therein.

Part II.—NOTE that the decision of the Privy Council in the case of *Profulla Kumar Mukherjee and others v. The Bank of Commerce Ltd., Khulna* cited in the foot-note under p. 197 and at p. 333 has been reported authoritatively in 49 Bom. L. R. at pp. 568 et seq.



B. J. B.

